

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 27, NUMBER 9  
THURSDAY, MARCH 1, 2001

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## **MEETING NOTICE**

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on March 6, 2001, at 10 a.m. in Room 131 of the Capitol Annex. See tentative agenda on pages 2281-2284 of this Administrative Register.

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

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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - March 6, 2001 at 10 a.m., Room 131, Capitol Annex**

**EXECUTIVE BRANCH ETHICS COMMISSION**

**Commission**

- 9 KAR 1:010. Statement of financial disclosure.
- 9 KAR 1:015. Preadministrative proceedings.
- 9 KAR 1:040. Registration and expenditure statements; financial transactions and termination forms; handbook; and enforcement.

**GOVERNOR'S OFFICE**

**Agricultural Development Board**

- 10 KAR 2:020E. Disbursement of monies from the Kentucky Agricultural Development Fund. ("E" expires 6/21/01)

**OFFICE OF THE ATTORNEY GENERAL**

**Department of Law**

- 40 KAR 1:080. Child Support "Most Wanted" Program.

**REVENUE CABINET**

**General Administration**

- 103 KAR 1:050. Forms manual.

**GENERAL GOVERNMENT CABINET**

**Department for Military Affairs**

**Division of Emergency Management**

**Disaster and Emergency Services (Public Hearing in January - extended deadline)**

- 106 KAR 1:140. Emergency management funding.
- 106 KAR 1:150. Emergency Management Assistance Fund application.
- 106 KAR 1:160. Emergency Management Assistance Fund reimbursement claim.
- 106 KAR 1:170. Local Emergency Management Agency Program quarterly report.
- 106 KAR 1:180. Project application.
- 106 KAR 1:190. Project application reimbursement.
- 106 KAR 1:200. Local plan.
- 106 KAR 1:210. Local emergency management training.
- 106 KAR 1:220. Local exercise.
- 106 KAR 1:230. Local emergency management agency ordinance requirement.
- 106 KAR 1:240. Local emergency management director appointment process.
- 106 KAR 1:250. Worker's Compensation enrollment form.
- 106 KAR 1:260. Supplementary state fund expense reimbursement eligibility list.
- 106 KAR 1:270. Repeal of 106 KAR 1:075.
- 106 KAR 1:280. Repeal of 106 KAR 1:060.
- 106 KAR 1:290. Specialized Rescue Squad Alternative Affiliation Agreement process.
- 106 KAR 1:300. Search and rescue mission notification and report form.
- 106 KAR 1:310. Search and rescue quarterly training report form.
- 106 KAR 1:320. Search and rescue quarterly incident report form.
- 106 KAR 1:330. Search and rescue squad quarterly active membership list form.
- 106 KAR 1:340. Rescue Aid Fund allocation.
- 106 KAR 1:350. Rescue squad minimum equipment.
- 106 KAR 1:360. Rescue Aid Fund application.
- 106 KAR 1:370. Rescue Aid Fund expenditure documentation.
- 106 KAR 1:380. Rescue squad cumulative equipment inventory form.
- 106 KAR 1:390. Search and rescue training requirements.

**FINANCE AND ADMINISTRATION CABINET**

**Travel Expense and Reimbursement**

- 200 KAR 2:006. Employees' reimbursement for travel.

**Health Insurance Coverage for Nonstate Employees**

- 200 KAR 20:011. Repeal of 200 KAR 20:010.

**Statewide Accounts**

- 200 KAR 24:020E. Allocation of driving under the influence service fees. ("E" expires 6/21/01)

**BOARDS AND COMMISSIONS**

**Real Estate Commission**

- 201 KAR 11:011. Definitions for 201 KAR Chapter 11. (Not Amended After Hearing)
- 201 KAR 11:040. Contracts to contain financing provisions. (Not Amended After Hearing)
- 201 KAR 11:045. Written offers to be submitted to owner-client. (Not Amended After Hearing)
- 201 KAR 11:062. Retention of brokers' records. (Not Amended After Hearing)
- 201 KAR 11:071. Repeal of 201 KAR 11:070. (Public Hearing in January)
- 201 KAR 11:090. Instruments prepared by broker, disposition. (Not Amended After Hearing)
- 201 KAR 11:095. Closing statements. (Not Amended After Hearing)
- 201 KAR 11:105. Owner's consent and authorization. (Not Amended After Hearing)
- 201 KAR 11:121. Improper conduct. (Not Amended After Hearing)
- 201 KAR 11:135. Salesman's obtaining broker's license. (Not Amended After Hearing)

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- 201 KAR 11:145. Salesman's duties when terminating affiliation with broker. (Not Amended After Hearing)
- 201 KAR 11:161. Repeal of 201 KAR 11:160. (Not Amended After Hearing)
- 201 KAR 11:170. Private school approval. (Not Amended After Hearing)
- 201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission. (Not Amended After Hearing)
- 201 KAR 11:210. Licensing, education, and testing requirements. (Not Amended After Hearing)
- 201 KAR 11:230. Mandatory continuing education. (Not Amended After Hearing)
- 201 KAR 11:245. Property management procedures and guidelines. (Not Amended After Hearing)
- 201 KAR 11:250. Listing and purchase contracts - provisions required. (Amended After Hearing)
- 201-KAR 11:350. Seller's disclosure of conditions form. (Amended After Hearing)
- 201 KAR 11:400. Agency disclosure requirements. (Amended After Hearing)
- 201 KAR 11:420. Standards for internet advertising. (Amended After Hearing)
- 201 KAR 11:430. Procedure of new applicant for criminal records background check. (Not Amended After Hearing)
- 201 KAR 11:440. Personal assistant duties. (Public Hearing in January)

### **Board of Ophthalmic Dispensers**

- 201 KAR 13:010. Board; powers, duties, meetings. (Deferred from January)
- 201 KAR 13:012. Repeal of 201 KAR 13:011. (Deferred from January)
- 201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status. (Not Amended After Hearing)
- 201 KAR 13:050. Apprentices. (Amended After Hearing)
- 201 KAR 13:055. Continuing education requirements. (Amended After Hearing)
- 201 KAR 13:060. Military service; reciprocity. (Amended After Hearing)

### **Board of Licensure for Professional Engineers and Land Surveyors**

- 201 KAR 18:102E. Electronic stamps, seals and signatures. ("E" expires 6/21/01)

### **Board of Physical Therapy**

- 201 KAR 22:020. Method of applying for licensure.
- 201 KAR 22:040. Procedure for renewing licenses.
- 201 KAR 22:061. Endorsement.

### **Board of Certification for Professional Counselors**

- 201 KAR 36:020. Fees - renewal date. (Deferred from December)
- 201 KAR 36:070. Education requirements. (Deferred from November)

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

### **Game**

- 301 KAR 2:111E. Deer and turkey hunting on federal areas. ("E" expires 4/21/01) (Deferred from December)
- 301 KAR 2:178E. Deer hunting on wildlife management areas. ("E" expires 4/21/01) (Deferred from December)
- 301 KAR 2:221E. Waterfowl seasons and limits. ("E" expires 5/21/01) (Deferred from February)
- 301 KAR 2:222E. Waterfowl hunting requirements. ("E" expires 5/21/01) (Deferred from February)
- 301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting. ("E" expires 3/21/01) (Deferred from November)
- 301 KAR 2:226E. Youth waterfowl hunting season. ("E" expires 4/21/01) (Deferred from December)

### **Hunting and Fishing**

- 301 KAR 3:100E. Special commission permits. ("E" expires 4/21/01) (Deferred from December)

### **Licensing**

- 301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses. ("E" expires 3/21/01) (Deferred from November)

## **DEPARTMENT OF AGRICULTURE Division of Weights and Measures**

### **General**

- 302 KAR 77:030. Height and weight of baskets of tobacco.

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

### **Public Water Supply**

- 401 KAR 8:010. Definitions for 401 KAR Chapter 8. (Amended After Hearing)
- 401 KAR 8:020. Public and semipublic water supplies - general provisions. (Amended After Hearing)
- 401 KAR 8:070. Public notification. (Not Amended After Hearing)
- 401 KAR 8:075. Consumer confidence reports. (Amended After Hearing)
- 401 KAR 8:150. Disinfection and filtration. (Not Amended After Hearing)
- 401 KAR 8:160. Enhanced filtration and disinfection. (Not Amended After Hearing)
- 401 KAR 8:500. Disinfection by-products. (Amended After Hearing)
- 401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors. (Amended After Hearing)

## **JUSTICE CABINET**

### **Office of the Medical Examiner**

- 500 KAR 12:010. Duplicate records request fee schedule.

### **Department of Criminal Justice Training**

### **Kentucky Law Enforcement Council**

- 503 KAR 1:110E. Department of Criminal Justice Training basic training: graduation requirements; records. ("E" expires 6/21/01)

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**TRANSPORTATION CABINET  
Department of Highways**

**Division of Motor Carriers**

601 KAR 1:020. Permit for hauling industrial materials; fee; bond. (Not Amended After Hearing)

**Office of Aeronautics**

**Airport Zoning Commission**

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.  
602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.  
602 KAR 50:050. Airport zoning map.  
602 KAR 50:060. Construction within jurisdictional airspace.  
602 KAR 50:070. Standards for determining obstructions.  
602 KAR 50:090. Permit application procedures.  
602 KAR 50:100. Standards for marking or lighting structures.

**EDUCATION, ARTS, AND HUMANITIES CABINET  
Board of Education  
Department of Education  
Office of Learning Programs Development**

**Office of Instruction**

704 KAR 3:345. Evaluation guidelines. (Not Amended After Hearing)

**LABOR CABINET**

**Occupational Safety and Health**

803 KAR 2:500E. Maritime employment ("E" expires 6/21/01)

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance**

**Health Insurance Contracts**

806 KAR 17:150E. Health benefit plan rate filing requirements. ("E" expires 6/21/01)  
806 KAR 17:180 (& E). Standard health benefit plan and comparison format. ("E" expired 1/19/01)  
806 KAR 17:250. Notification requirements for drug benefits. (Amended After Hearing)  
806 KAR 17:270. Telehealth claim forms and records. (Amended After Hearing)  
806 KAR 17:310E. Prompt payment of claims reporting requirements.  
806 KAR 17:320E. Kentucky Access requirements. ("E" expires 6/21/01)  
806 KAR 17:330E. Kentucky Access health benefit plans. ("E" expires 6/21/01)  
806 KAR 17:350E. Guaranteed Acceptance Program (GAP) reporting requirements. ("E" expires 6/21/01)

**Group and Blanket Health Insurance**

806 KAR 18:030. Group health insurance coordination of benefits. (Not Amended After Hearing)

**Captive Insurers**

806 KAR 49:020. Captive insurer application requirements. (Deferred from February)  
806 KAR 49:030. Captive insurer reporting requirements. (Deferred from February)  
806 KAR 49:040. Captive insurer parents and affiliates. (Deferred from February)

**Department of Financial Institutions**

**Check Cashing**

808 KAR 9:010. Books and records to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer. (Not Amended After Hearing)  
808 KAR 9:020. Establishment of examination fees.  
808 KAR 9:030. KRS Chapter 368 - Administrative hearing procedures.

**Department of Housing, Buildings and Construction**

**Elevator Safety**

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**Kentucky Building Code**

815 KAR 7:070. The Kentucky Certified Building Inspector Program.  
815 KAR 7:105. Kentucky Building Code/1997.

**Plumbing**

815 KAR 20:060. Quality and weight of materials. (Deferred from February)  
815 KAR 20:090. Soil, waste and vent systems. (Deferred from February)  
815 KAR 20:100. Joints and connections.  
815 KAR 20:120. Water supply and distribution.

**CABINET FOR HEALTH SERVICES**

**Office of Certificate of Need**

900 KAR 6:050 & E. Certificate of Need administrative regulation. ("E" expires 4/21/01) (Public Hearing in January)

**Department for Public Health**

**Local Health Departments**

902 KAR 8:040. Definition of terms in 902 KAR Chapter 8.  
902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.  
902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.  
902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

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- 902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.  
902 KAR 8:100. Disciplinary procedures applicable for local health department employees.  
902 KAR 8:120. Leave provisions applicable to employees of local health departments.

**Health Services and Facilities**

- 902 KAR 20:008E. License procedures and fee schedule. ("E" expires 6/21/01)  
902 KAR 20:016. Hospitals; operations and services. (Public Hearing in January)  
902 KAR 20:066E. Operation and services; adult day health care programs. ("E" expires 4/21/01) (Deferred from December)

**Department for Medicaid Services**

**Services**

- 907 KAR 1:021E. Amounts payable for drugs. ("E" expires 6/21/01)  
907 KAR 1:044E. Mental health center services. ("E" expires 5/21/01) (Deferred from February)  
907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability ("E" expires 2/19/01) (Deferred from November)  
907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 6/21/01)  
907 KAR 1:160E. Home and community based waiver services. ("E" expires 6/21/01)  
907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC). ("E" expires 6/21/01)  
907 KAR 1:479E. Durable medical equipment covered benefits and reimbursement. ("E" expires 5/21/01) (Deferred from February)

**Payment and Services**

- 907 KAR 3:005E. Physicians' services. ("E" expires 5/21/01) (Deferred from February)  
907 KAR 3:010E. Reimbursement for physicians' services. ("E" expires 5/21/01) (Deferred from February)  
907 KAR 3:030 (& E). Coverage and payments for IMPACT Plus services. ("E" expired 2/19/01) (Amended After Hearing)

**Department for Mental Health and Mental Retardation Services**

**Kentucky Traumatic Brain Injury Trust Fund Board**

- 908 KAR 4:030. Traumatic Brain Injury Trust Fund operations. (Deferred from February)

**CABINET FOR FAMILIES AND CHILDREN**

**Department for Community Based Services**

**K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

- 921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 6/21/01)

**CABINET FOR FAMILIES AND CHILDREN**

**Department for Community Based Services**

**Division of Policy Development**

**Child Welfare**

- 922 KAR 1:330. Child protective services. (Deferred from February)  
922 KAR 1:420. Child fatality or near fatality investigations. (Deferred from February)  
922 KAR 1:430. Child protective services in-home case planning and service delivery. (Deferred from February)

**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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS  
RECEIVED AS OF NOON, FEBRUARY 15, 2001

GOVERNOR'S OFFICE FOR TECHNOLOGY  
Telehealth Board

February 15, 2001

- (1) **10 KAR 3:020.** Establishing and funding telehealth network training centers.
- (2) The Telehealth Board, Governor's Office for Technology, 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 March 21, 2001 at 2 p.m., Eastern Standard Time in the Office of Policy and Customer Relations Conference Room, Governor's Office for Technology, 193 Versailles Road, Suite 63, 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 calendar days prior to the hearing date, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Veno, Administrative Assistant to the Telehealth Board, Governor's Office for Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228 Phone, (502) 573-1458 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 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 the request may obtain a request form from the Governor's Office for Technology at the following address: Donna Veno, Administrative Assistant to the Telehealth Board, Governor's Office for Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228 Phone, (502) 573-1458 Fax.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 11.550(3).
  - (b) The proposed regulation will provide for the establishment and funding of Telehealth Network training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and 1 each in western Kentucky and eastern Kentucky, with the sites to be determined by the Telehealth Board, as mandated by KRS 11.550.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and 1 each in western Kentucky and eastern Kentucky, with the sites to be determined by the board as stated herein; and to establish basic criteria therefor.
  - (d) The benefit expected from this proposed administrative regulation is as follows: To utilize telecommunications technology to improve access to healthcare resources.
  - (e) This administrative regulation will be implemented by the establishment of telehealth training centers at the University of Kentucky and the University of Louisville, and eastern Kentucky and western Kentucky training centers as designated by the Telehealth Board, pursuant to the mandates of KRS 11.550.

February 15, 2001

- (1) **10 KAR 3:030.** Establishing and funding telehealth network rural sites.
- (2) The Telehealth Board, Governor's Office for Technology, 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 March 21, 2001 at 3 p.m., Eastern Standard Time in the Office of Policy and Customer Relations Conference Room, Governor's Office for Technology, 193 Versailles Road, Suite 63, 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 calendar days prior to the hearing date, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Veno, Administrative Assistant to the Telehealth Board, Governor's Office for Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228 Phone, (502) 573-1458 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 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 the request may obtain a request form from the Governor's Office for Technology at the following address: Donna Veno, Administrative Assistant to the Telehealth Board, Governor's Office for Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228 Phone, (502) 573-1458 Fax.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 11.550(3).
  - (b) The proposed regulation will provide for the establishment and funding of Telehealth Network rural sites, as mandated by KRS 11.550. This network will establish a maximum of 25 rural sites based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the Telehealth Network, 10 local health departments.

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(c) The necessity and function of the proposed administrative regulation is as follows: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to develop a telehealth network, to coordinate with the training centers, of no more than 25 rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the Telehealth Network, 10 local health departments, 5 of which shall be administered by the University of Kentucky and 5 (5) of which shall be administered by the University of Louisville. This administrative regulation also establishes basic criteria therefor.

(d) The benefit expected from this proposed administrative regulation is as follows: To utilize telecommunications technology to improve access to healthcare resources.

(e) This administrative regulation will be implemented by the initiation of a Telehealth Network with training centers at the University of Kentucky and the University of Louisville, and eastern Kentucky and western Kentucky training centers as designated by the Telehealth Board, pursuant to the mandates of KRS 11.550. The Telehealth Network shall consist of no more than 25 rural sites and 10 local health departments.

### STATE BOARD OF ELECTIONS

January 17, 2001

(1) **31 KAR 4:070.** Recanvass procedures.

(2) The State Board of Elections 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 March 22, 2001 at 1 p.m. at the State Board of Elections Offices at 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 March 22, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mary Sue Helm, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601-3240, Phone (502) 573-7100, Telefax No. (502) 573-4369.

(b) On 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 by writing to Mary Sue Helm at the above address, or by calling (502) 573-7100 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 314A.205(3).

(b) The administrative regulation that the State Board of Elections intends to promulgate will amend 31 KAR 4:070 to establish the proper procedure for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky.

(c) The necessity, function, and conformity of the proposed regulation is as follows: KRS 117.305(1) requires that county boards of election conduct a recanvass when appropriately requested. KRS 117.305(4) grants the State Board of Elections the discretion to establish the proper procedure for conducting a recanvass. This regulation specifies the proper procedure for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky.

(d) The benefit expected from this administrative regulation is that county boards of election will know the proper procedure for conducting a recanvass.

(e) The administrative regulation will be implemented as follows: A county board of election will be required to follow the procedures established by the administrative regulation when conducting a recanvass.

### KENTUCKY BOARD OF OPTOMETRIC EXAMINERS

January 27, 2001

(1) **201 KAR 5:090.** Annual renewal fees.

(2) The Kentucky Board of Optometric Examiners 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 March 21, 2001, at 9:30 a.m., at the Kentucky Board of Optometric Examiners, 301 E. Main St., Suite 850, 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 March 21, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Connie Calvert, Executive Director, Board of Optometric Examiners, 302 E. Main Street, Suite 850, Lexington, Kentucky 40507, Phone (859) 246-2744, Fax (859) 246-2746.

(b) On 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 by writing to Connie Calvert at the above address, or by calling (859) 246-2744 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

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- (a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 320.240(7) and 320.280(1).
- (b) The administrative regulation that the Kentucky Board of Optometric Examiners intends to promulgate will amend 201 KAR 5:010 to increase the fees to \$200.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 320.280 authorizes the board to charge a renewal fee of \$200. This regulation sets the fee at \$200.
- (d) The benefit expected from this administrative regulation is the board will not have to draw on its reserves to operate.
- (e) The administrative regulation will be implemented as follows: Persons renewing their license will pay a fee of \$200.

### KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

February 14, 2001

- (1) **201 KAR 17:027**. Supervision requirements for a speech-language pathology assistant.
- (2) The Kentucky Board of Speech-Language Pathology and Audiology 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 March 27, 2001 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, 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 March 27, 2001 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.
- (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 an administrative body.
- (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to supervision requirements for speech-language pathology assistant is KRS 334A.080 and 334A.033.
- (b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will establish the supervision guidelines for speech-language pathology assistants.
- (c) The necessity and function of the proposed administrative regulation is the requirement in KRS 334A.033 that a speech-language pathology assistant may only practice when under supervision. This regulation sets forth the supervision requirements.
- (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.
- (e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

### BOARD OF PHYSICAL THERAPY

February 13, 2001

- (1) **201 KAR 22:052**, Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificent.
- (2) The Board of Physical Therapy 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 March 22, 2001 at 9 a.m. (EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.
- (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 is not received at least 10 days prior to March 22, 2001, 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 Klusch, Executive Director; Board of Physical Therapy; 9110 Leesgate Road, Suite 6; Louisville, Kentucky 40222; Telephone: (502) 327-8497; Fax: (502) 423-0934.
- (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 Executive Director; Board of Physical Therapy; 9110 Leesgate Road, Suite 6; Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation is KRS 327.040.
- (b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:052, an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is within KRS 327.050, 327.060 and 327.080. This will amend the language to clarify the complaint and discipline process.
- (d) The benefit expected from this administrative regulation is that terminology will be current.
- (e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.



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February 13, 2001

- (1) **201 KAR 22:053**, Code of ethical standards and standards of practice for physical therapists and physical therapists' assistants.
- (2) The Board of Physical Therapy 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 March 22, 2001 at 9 a.m. (EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.
- (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 is not received at least 10 days prior to March 22, 2001, 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 Klusch, Executive Director; Board of Physical Therapy; 9110 Leesgate Road, Suite 6; Louisville, Kentucky 40222; Telephone: (502) 327-8497; Fax: (502) 423-0934.
- (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 Executive Director; Board of Physical Therapy; 9110 Leesgate Road, Suite 6; Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation is KRS 327.040.
- (b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:053, an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is within KRS 327.050, 327.060 and 327.080. This will amend the language to clarify the code of ethics and the standards for supervision and documentation.
- (d) The benefit expected from this administrative regulation is to clarify the terminology to better understand the standards at which physical therapist and physical therapist's assistants should abide by to uphold the safety and welfare of the public.
- (e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

### KENTUCKY BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS

January 23, 2001

- (1) **201 KAR 31:050**. Renewals.
- (2) The Kentucky Board of Registration for Professional Geologists 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 March 26, 2001 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, 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 March 26, 2001 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.
- (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 an administrative body.
- (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to renewals is KRS 332A.030(5), and 332A.060.
- (b) The administrative regulation the Board of Registration for Professional Geologists intends to promulgate will set establish the conditions for renewal, suspension, and revocation of certificates of registration.
- (c) The necessity and function of the proposed administrative regulation is to set forth in detail the procedures for the renewal of certificates of registration.
- (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Registration for Professional Geologists.
- (e) The regulation will be implemented by the Kentucky Board of Registration for Professional Geologists. The implementing body will merely adhere to the definitions as outlined in the regulation.

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES

February 14, 2001

- (1) **202 KAR 7:030**. Prescribe a schedule of fees and charges for services to emergency medical technicians.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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(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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6523 and 311.6561.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will prescribe a schedule of fees and charges for services to emergency medical technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish a fee schedule.

(d) The benefits expected from administrative regulation are: prescribe a schedule of fees and charges for services to emergency medical technicians.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:050**, Requirements for examination, certification and recertification of the emergency medical technician-basic.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6523 and 311.6541.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate administrative regulations relating to emergency medical technicians (EMTS).

(c) The necessity and function of the proposed administrative regulation is as follows: To establish requirements for examination, certification and recertification of the basic level of emergency medical technicians.

(d) The benefits expected from administrative regulation are: It will establish requirements for examination, certification and recertification of the basic level of emergency medical technicians.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented as stated by the Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:060**, Emergency medical technician-basic course requirements.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

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- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6541.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will establish requirements for the education and training of the emergency medical technician-basic (EMT-B).
  - (c) The necessity and function of the proposed administrative regulation is as follows: Establish requirements for the education and training of the emergency medical technician-basic (EMT-B)
  - (d) The benefits expected from administrative regulation are: It will provide establish requirements for the education and training of the emergency medical technician-basic (EMT-B).
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 8, 2001

- (1) **202 KAR 7:070.** Emergency medical technician-basic instructions and EMT-instructor trainers.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 20, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6541.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate establishes the requirements for attaining certification as an emergency medical technician-basic instructor or appointment as an EMT instructor trainer.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Establishes requirements and certification for EMT basic instructors or appointment as an EMT instructor trainer.
  - (d) The benefits expected from administrative regulation are: Establishment of requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) or appointment as an EMT instructor trainer.
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

January 10, 2001

- (1) **202 KAR 7:080.** Emergency medical technician-basic authorized procedures.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001
- (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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services at the address above.
- (7) Information relating to the proposed administrative regulation:

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(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.6541.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will establish procedures which an emergency medical technician-basic (EMT-B) shall be authorized to perform.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish procedures which an emergency medical technician-basic (EMT-B) shall be authorized to perform.

(d) The benefits expected from administrative regulation are: It will establish procedures which an emergency medical technician-basic (EMT-B) shall be authorized to perform.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:090.** Disciplinary actions of emergency medical technicians.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6541 and 311.6577.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will establish grounds and procedures for taking disciplinary action against an applicant for certification or a certified EMT.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes grounds and procedures for taking disciplinary action against an applicant for certification or a certified EMT.

(d) The benefits expected from administrative regulation are: It will establish grounds and procedures for taking disciplinary action against an applicant for certification or a certified EMT.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:092.** Emergency medical technician first responder training, examination, and certification.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6523, 311.6528 and 311.6541.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will provide establish requirements for emergency medical technician first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes requirements for emergency medical technician first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications.

(d) The benefits expected from administrative regulation are: It will establish requirements for emergency medical technician first responder

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(EMT-FR) and EMT-FR instructor training, examinations, and certifications.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented as stated by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:094.** Emergency medical services educational institutions and emergency medical services testing agencies.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6523, 311.6524 and 311.6541.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will establish requirements for an organization to be approved by the board as an emergency medical services (EMS) educational institution or an EMS testing agency.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes requirements for an organization to be approved by the board as an emergency medical services (EMS) educational institution or an EMS testing agency.

(d) The benefits expected from administrative regulation are: It will provide requirements for an organization to be approved by the board as an emergency medical services (EMS) educational institution or an EMS testing agency.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:100.** Establishes rules of practice and procedure for the board, committees of the board and subcommittees of the board.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish rules of practice and procedure for the board, committees of the board and subcommittees of the board.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes rules of practice and procedure for the board, committees of the board and subcommittees of the board.

(d) The benefits expected from administrative regulation are: It will establish rules of practice and procedure for the board, committees of the board and subcommittees of the board.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

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- (1) **202 KAR 7:102.** Implements statutes as they relate to committees and subcommittees of the board.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to implement statutes as they relate to committees and subcommittees of the board.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Implements statutes as they relate to committees and subcommittees of the board.
  - (d) The benefits expected from administrative regulation are: It will be implement statutes as they relate to committees and subcommittees of the board.
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

- (1) **202 KAR 7:110.** Establishes procedures for referral of matters for criminal prosecution.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish procedures for referral of matters for criminal prosecution.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Establish procedures for referral of matters for criminal prosecution.
  - (d) The benefits expected from administrative regulation are: It will establish procedures for referral of matters for criminal prosecution.
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

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- (1) **202 KAR 7:120.** Establishes requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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:

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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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Establishes requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.
  - (d) The benefits expected from administrative regulation are: It will establish requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

- (1) **202 KAR 7:130.** Establishes procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.
- (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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.
  - (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Establishes procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.
  - (d) The benefits expected from administrative regulation are: It will establish procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.
  - (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

- (1) **202 KAR 7:140.** Establishes procedures for investigation and disposition of complaints.
- (2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, the public hearing will be canceled.



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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish procedures for investigation and disposition of complaints.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes procedures for investigation and disposition of complaints.

(d) The benefits expected from administrative regulation are: It will establish procedures for investigation and disposition of complaints.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:150.** Establishes procedures for disciplinary hearings.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish procedures for disciplinary hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes procedures for disciplinary hearings.

(d) The benefits expected from administrative regulation are: It will establish procedures for disciplinary hearings.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:160.** Establishes offenses for which the Kentucky Board of Emergency Medical Services may discipline a certificate or license holder or any applicant for a license or certificate.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services at the address



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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 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish offenses for which the Kentucky Board of Emergency Medical Services may discipline a certificate or license holder or any applicant for a license or certificate.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes offenses for which the Kentucky Board of Emergency Medical Services may discipline a certificate or license holder or any applicant for a license or certificate.

(d) The benefits expected from administrative regulation are: It will establish offenses for which the Kentucky Board of Emergency Medical Services may discipline a certificate or license holder or any applicant for a license or certificate.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:405.** Establishes the requirements to become a paramedic student.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements to become a paramedic student.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the requirements to become a paramedic student.

(d) The benefits expected from administrative regulation are: It will establish the requirements to become a paramedic student.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:407.** Establishes paramedic training requirements.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish paramedic training requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes paramedic training requirements.

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(d) The benefits expected from administrative regulation are: Establishes paramedic training requirements.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:409.** Establishes the requirements for educational institutions as it relates to paramedics.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements for educational institutions as it relates to paramedics.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the requirements for educational institutions as it relates to paramedics.

(d) The benefits expected from administrative regulation are: It will establish the requirements for educational institutions as it relates to paramedics.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:413.** Establishes the requirements for continuing education by paramedics.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements for continuing education by paramedics.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the requirements for continuing education by paramedics.

(d) The benefits expected from administrative regulation are: It will establish the requirements for continuing education by paramedics.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:426.** Establishes the requirements for licensure and renewal of licensure for paramedics.

(2) The Kentucky Board of Emergency Medical Services intends to establish the administrative regulation governing the subject matter listed above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements for licensure and renewal of licensure for paramedics.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the requirements for licensure and renewal of licensure for paramedics.

(d) The benefits expected from administrative regulation are: It will establish the requirements for licensure and renewal of licensure for paramedics.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:433.** Establishes the requirements for out-of-state paramedic not licensed in Kentucky.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements for out-of-state paramedics not licensed in Kentucky.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the requirements for out-of-state paramedics not licensed in Kentucky.

(d) The benefits expected from administrative regulation are: It will establish the requirements for out-of-state paramedic not licensed in Kentucky.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:435.** Establishes the requirements for supervision of out-of-state paramedic student.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements for supervision of out-of-state paramedic student.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the requirements for supervision of out-of-state paramedic student.

(d) The benefits expected from administrative regulation are: It will establish the requirements for supervision of out-of-state paramedic student.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:436.** Establishes the procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary license.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary license.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary license.

(d) The benefits expected from administrative regulation are: It will establish the procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary license.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:461.** Establishes the scope of practice matters for paramedics.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

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

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

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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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the scope of practice matters for paramedics.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the scope of practice matters for paramedics.

(d) The benefits expected from administrative regulation are: It will establish the scope of practice matters for paramedics.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:465.** Establishes the requirements of a medical director as it relates to paramedics.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the requirements of a medical director as it relates to paramedics.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the requirements of a medical director as it relates to paramedics.

(d) The benefits expected from administrative regulation are: It will establish the requirements of a medical director as it relates to paramedics.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:491.** Establishes a fee schedule relating to services of a paramedic.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky

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Board of Emergency Medical Services to establish a fee schedule relating to services of a paramedic.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish a fee schedule relating to services of a paramedic.

(d) The benefits expected from administrative regulation are: It will establish a fee schedule relating to services of a paramedic.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:493.** Establishes the procedures related to discontinuance of resuscitation by a paramedic.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish a fee schedule relating to services of a paramedic.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes a fee schedule relating to services of a paramedic.

(d) The benefits expected from administrative regulation are: It will establish a fee schedule relating to services of a paramedic.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:495.** Establishes the procedures related to determination of death by a paramedic.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the procedures related to determination of death by a paramedic.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the procedures related to determination of death by a paramedic.

(d) The benefits expected from administrative regulation are: It will establish the procedures related to determination of death by a paramedic.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:497.** Establishes the training procedures for paramedics in determination of death and preservation of evidence.

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(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the training procedures for paramedics in determination of death and preservation of evidence.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish the training procedures for paramedics in determination of death and preservation of evidence.

(d) The benefits expected from administrative regulation are: It will establish the training procedures for paramedics in determination of death and preservation of evidence.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:520.** Allocation of funding assistance for purchase of ambulances and equipment for emergency medical services.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to maintain a program for the purpose of assisting units of government in the purchases of ambulances and equipment.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes standards and criteria governing allocation of funding assistance to eligible applicants for the purchase of ambulances and equipment.

(d) The benefits expected from administrative regulation are: It will provide a program for the purpose of assisting units of local government in the purchases of ambulances and equipment.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:570.** Establishes license procedures and fee schedule for ambulance providers.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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

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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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to maintain a program for the purpose of providing specific requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes specific requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for ambulance providers.

(d) The benefits expected from administrative regulation are: It will provide a program for the purpose of establishing requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for ambulance providers.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:580.** Establishes license procedures for Class I ground ambulance providers.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the minimum licensing requirements for Class I ground ambulance providers.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the minimum requirements for Class I ground ambulance providers.

(d) The benefits expected from administrative regulation are: It will establish the minimum requirements for Class I ground ambulance providers.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:582.** Establishes the minimum licensing requirements for Class II ground ambulance providers.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.



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(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the minimum licensing requirements for Class II ground ambulance providers.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes the minimum licensing requirements for Class II ground ambulance providers.

(d) The benefits expected from administrative regulation are: It will establish the minimum licensing requirements for Class II ground ambulance providers.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:584.** Provides for the minimum licensing requirements for Class III ground ambulance providers.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to establish the minimum licensing requirements for Class III ground ambulance providers.

(c) The necessity and function of the proposed administrative regulation is as follows: Provides for the minimum licensing requirements for Class III ground ambulance providers.

(d) The benefits expected from administrative regulation are: It will establish the minimum licensing requirements for Class III ground ambulance providers.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:590.** Sets forth the licensure and operation requirements for air ambulance providers.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services at the address above.

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(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 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to set forth the licensure and operation requirements for air ambulance providers.

(c) The necessity and function of the proposed administrative regulation is as follows: Provides for the licensure and operation requirements for air ambulance providers.

(d) The benefits expected from administrative regulation are: It will establish the licensure and operation requirements for air ambulance providers.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

February 14, 2001

(1) **202 KAR 7:595.** Sets forth the licensure and operation requirements for advanced life support (ALS) medical first responder.

(2) The Kentucky Board of Emergency Medical Services intends to establish 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 March 30, 2001, 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 March 30, 2001, 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 Board of Emergency Medical Services, c/o Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Lexington, Kentucky 40507, telephone (859) 255-8581; facsimile (859) 231-0851.

(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 Board of Emergency Medical Services 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 subject matter of administrative regulation is KRS 311.6524.

(b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will authorize the Kentucky Board of Emergency Medical Services to set forth the licensure and operation requirements for advanced life support (ALS) medical first responder.

(c) The necessity and function of the proposed administrative regulation is as follows: Provides for the licensure and operation requirements for advanced life support (ALS) medical first responder.

(d) The benefits expected from administrative regulation are: It will establish the licensure and operation requirements for advanced life support (ALS) medical first responder.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

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

January 12, 2001

(1) **301 KAR 2:132.** Elk degradation permits and quota hunts.

(2) The Department of Fish and Wildlife Resources 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 March 21, 2001, at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 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 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 is not received from the required number of people at least 10 days prior to March 21, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-6508.

(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 of this administrative regulation is KRS 150.025(1), 150.177 and 150.390.

(b) The administrative regulation that the department intends to promulgate will amend an existing administrative regulation. It will set up the season and requirements for a limited elk quota hunt in the fall of 2001 and allow for the use of the commission tags. It will amend the name of the regulation.

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(c) The necessity and function of the proposed administrative regulation is to increase hunter opportunity within the sound biological management of the elk herd.

(d) The benefits expected from the administrative regulation are greater hunter opportunity and better elk management.

(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 Law Enforcement Division.

**JUSTICE CABINET  
Department of Corrections**

February 13, 2001

(1) **501 KAR 2:020**, Definitions.

(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 March 21, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, 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 March 21, 2001, 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, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(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 2:020, as follows: To define Class C felons and expand the definitions of Class D felons to include a Class D felon with a sentence of more than 5 years classified as community custody.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. 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.

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

February 13, 2001

(1) **501 KAR 2:040**, Waivers.

(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 March 21, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, 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 March 21, 2001, 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, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(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 2:040, as follows: To include Class C felons to controlled intake and reflect the appropriate title of Community Detention Branch Manager.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

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1. 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.

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

February 13, 2001

(1) **501 KAR 2:050**, Transfer requests.

(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 March 21, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, 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 March 21, 2001, 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, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(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 2:050, as follows: To include Class C felons.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. 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.

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

February 13, 2001

(1) **501 KAR 2:060**, Procedures for housing of Class D and Class C felons.

(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 March 21, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, 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 March 21, 2001, 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, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(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 2:060, as follows: To include Class C felons; permit a restricted or minimum custody Class D felon to participate in community service work under supervision of jail staff; set forth procedures for assignment of Class C felons; clarify when and how a probation or parole violator shall be considered for furlough; place restrictions on eligibility for a furlough; and require educational good time to follow procedures set forth in CPP 20.1.

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(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. 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.

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

### TRANSPORTATION CABINET

February 15, 2001

(1) **601 KAR 9:210**. Continuation of title liens.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation regarding the procedure for continuing a security interest on property for which a certificate of title has been issued.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2001, 10 a.m., local prevailing time, 10th floor, General Counsel Conference Room, State Office Building, 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 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 March 27, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Hollie Spade at: phone (502) 564-7650, fax (502) 564-5238, or e-mail hspade@mail.kytc.state.ky.us. A written request may be mailed to the Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(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 13 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 continuation of title liens is KRS 186A.190 and 186A.010.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will create a procedure for extending the period of an existing security interest notation on a certificate of title.

(c) The necessity, function, and conformity of the proposed administrative regulation are as follows: To create a procedure for the continuation of a security interest pursuant to the amendment of KRS 186A.190(1) in 2000 Ky. Acts ch. 408.

(d) The benefits expected from the administrative regulation are to provide policy and procedures for continuing a security interest on a certificate of title.

(e) The administrative regulation will be implemented as follows: By the Transportation Cabinet in accordance with KRS Chapter 13A.

(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 Hollie Spade at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

### EDUCATION PROFESSIONAL STANDARDS BOARD

February 2001

(1) **704 KAR 20:012**, Repeal of administrative regulations.

(2) The Education Professional Standards Board intends to repeal administrative regulations.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 26, 2001 at 1 p.m. at the Council on Postsecondary Education Conference Room A, 1024 Capital Center Drive, 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 March 26, 2001, the hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

(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 repeal of administrative regulations is KRS 13A.310. The statutory authority for the promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and 161.030.

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(b) The administrative regulations that the Education Professional Standards Board intends to repeal are: 704 KAR 20:057, 704 KAR 20:070, 704 KAR 20:075, 704 KAR 20:076, 704 KAR 20:078, 704 KAR 20:080, 704 KAR 20:095, 704 KAR 20:105, 704 KAR 20:115, 704 KAR 20:135, 704 KAR 20:145, 704 KAR 20:146, 704 KAR 20:159, 704 KAR 20:160, 704 KAR 20:161, 704 KAR 20:175, 704 KAR 20:180, 704 KAR 20:229, 704 KAR 20:230, 704 KAR 20:235, 704 KAR 20:251, 704 KAR 20:255, 704 KAR 20:275, 704 KAR 20:290, 704 KAR 20:340, 704 KAR 20:520, 704 KAR 20:570, 704 KAR 20:660.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 13A.310 establishes the requirements for repeal of administrative regulations.

2. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

3. KRS 161.030 grants the Education Professional Standards Board certification authority.

4. This administrative regulation repeals teaching certificates that are no longer issued by the Education Professional Standards Board; all teaching certificates are now issued under 704 KAR 20:670.

(d) The benefits expected from administrative regulation are: The EPSB was directed under KRS 161.028 to streamline teacher certification and reduce the number of certificates issued. The administrative regulations listed for repeal established the old teaching certificates issued prior to this directive from the General Assembly, which have now phased out and are no longer issued. Repeal of these regulations would promote this legislative mandate.

(e) The administrative regulation will be implemented as follows: Local districts, educator preparation programs, and private education associations would be notified of the changes, and publications of the Education Professional Standards Board would be updated to reflect the changes.

### February 2001

(1) **704 KAR 20:300**, Part-time adjunct instructor certificate.

(2) The Education Professional Standards Board 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 March 26, 2001 at 1 p.m. at the Council on Postsecondary Education Conference Room A, 1024 Capital Center Drive, 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 March 26, 2001, the hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

(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 promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and KRS 161.030. The authority to promulgate administrative regulation regarding the requirements for an adjunct instructor certificate is KRS 161.046.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:300, Part-time adjunct instructor certificate. The amendment would allow persons with exceptional life or work experience, as verified by the candidate and hiring superintendent and approved by the EPSB, to be awarded an adjunct instructor certificate.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

2. KRS 161.030 grants the Education Professional Standards Board certification authority.

3. KRS 161.046 directs the Education Professional Standards Board to establish eligibility requirements for adjunct instructors.

(d) The benefits expected from administrative regulation are: This amendment would expand who can receive an adjunct instructor certificate and under what terms a district may hire such an individual. The amendment also would establish the review process and standards under which the EPSB would approve or deny the adjunct instructor certificate. This amendment would assist the local districts in recruiting individuals with special expertise for part-time employment as an adjunct instructor.

(e) The administrative regulation will be implemented as follows: Local districts, educator preparation programs, and private education associations would be notified of the changes, and publications of the Education Professional Standards Board would be updated to reflect the changes.

### February 2001

(1) **704 KAR 20:690**, Kentucky Teacher Internship Program.

(2) The Education Professional Standards Board 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 March 26, 2001 at 1 p.m. at the Council on Postsecondary Education Conference Room A, 1024 Capital Center Drive, 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 March 26, 2001, the hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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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 promulgation of an administrative regulation relating to the establishing of standards and requirements for obtaining and maintaining a teaching certificate is KRS 161.028 and KRS 161.030. KRS 161.030 directs the Education Professional Standards Board in the development and oversight of the teacher internship program.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:690, Kentucky Teacher Internship Program. The amendment would further clarify the appeals process, including selection of appeals committee members, review of materials, determination of evidentiary matters, and final action by the EPSB.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

2. KRS 161.030 grants the Education Professional Standards Board certification authority.

3. KRS 161.030 establishes the teacher internship program.

(d) The benefits expected from administrative regulation are: The amendment would facilitate the establishment of a more comprehensive and fair appeals process and would provide clarity for the appeals committee, the internship committee, and the teacher intern.

(e) The administrative regulation will be implemented as follows: Local districts, educator preparation programs, and private education associations would be notified of the changes, and publications of the Education Professional Standards Board would be updated to reflect the changes.

### WORKFORCE DEVELOPMENT CABINET Department for Employment Services

January 26, 2001

(1) **787 KAR 1:230**. Due dates.

(2) The Cabinet for Workforce Development, Department for Employment Services, Division of Unemployment Insurance, 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 March 27, 2001, at 9 a.m., in Conference Room A of the Commissioner's Office, 2nd Floor, 275 East Main 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 March 27, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Margaret Whittet, Commissioner, Department for Employment Services, Cabinet for Workforce Development, 275 East Main Street, 2 West, Frankfort, Kentucky 40621, Phone: (502) 564-5331, Fax: (502) 564-7452.

(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 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 form from the Administrative Regulation Coordinator, Department for Employment Services, 275 East Main Street, 2nd Floor East, Frankfort, Kentucky 40621.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the amendment of an administrative regulation relating to successorship is KRS 151B.020 and 341.115.

(b) The administrative regulation that the Department for Employment Services intends to amend is 787 KAR 1:230, Due dates. This administrative regulation is being amended to set forth procedures for dating reports or payments that are processed. This relates to unemployment insurance tax reports and payments where the envelope and the accompanying postmark are not considered in determining timeliness. Instead the imaging system will date the report or payment and give the filing party consideration for the time lost in delivery of the mail. The backdating of 5 business days should allow adequate delivery time for mail sent from any location within the United States.

(c) The necessity, function, and conformity of the regulation to be amended is as follows: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

(d) The benefit expected from this administrative regulation is to allow the department to contract with other state agencies for payment and report processing and the imaging of those documents for use within the department.

(e) The administrative regulation will be implemented by the imaging system backdating the reports or payments 5 business days which should allow adequate delivery time for mail sent from any location within the United States.

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

February 9, 2001

(1) **804 KAR 4:360**, Restaurant drink licenses for fifth and sixth class cities, to establish a fee to enable the department to issue restaurant drink licenses for the sale of distilled spirits and wine and malt beverages to cities of the fifth and sixth class.

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

(3) A public hearing to receive oral and written comments on the proposed new administrative regulation has been scheduled for Wednesday, March 28, 2001, at 1 p.m., EST, in the Hearing Room of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601.

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(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 calendar days prior to Wednesday, March 28, 2001, at 1:00 p.m., EST, 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, Suite A-2, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

(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 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 promote economic development in cities of the fifth and sixth class by issuing restaurant drink licenses for the sale of distilled spirits and wine and malt beverages to restaurants that seat a minimum of 100 patrons and derive a minimum of 70% of gross receipt from the sale of food and establish a fee for these licenses.

(c) The necessity and function and conformity of the proposed administrative regulation amendment is as follows: KRS 242.185(6) provides for a limited local option election to be held in any city or county in which prohibition is in effect. The limited election is to approve the sale of alcoholic beverages by the drink in restaurants that have seating for a minimum of 100 patrons and that derive at least 70% of gross revenues from the sale of food. Although there is presently a restaurant drink license created by statute, there is presently no fee authorized in the statute relating to a fifth or sixth class city.

(d) The benefits expected from the administrative regulation amendment are: This administrative regulation amendment will create the fee for any distilled spirits and wine restaurant drink license to be issued in any fifth or sixth class or lower city the same fee as specified in KRS 243.030 for a fourth class city restaurant drink license. The fee for the malt beverage retail license shall be the same as the fee specified in KRS 243.040.

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

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance**

February 8, 2001

(1) **806 KAR 9:310**, Viatical settlement broker license.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for March 21, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 by an administrative body or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree in writing to be present at a public hearing.
- (b) If a request for a public hearing and an agreement to attend the public hearing are not received from the required number of persons at least 10 calendar days prior to March 21, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Suetta W. Dickinson, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, or contact Suetta Dickinson at telephone number (502) 564-6075 or at facsimile number (502) 564-1453.

(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) Persons wishing to make written comments should mail their written comments to the Department of Insurance at the address listed above or send it by facsimile to the above number.

(7)(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.

(8) 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, 304.15-700, and 304.15-720.

(b) The administrative regulation that the department intends to promulgate (along with 4 other new companion administrative regulations) will replace 806 KAR 15:040 and move the licensing provisions to Subtitle 9 with most of the department's other licensing provisions. This administrative regulation will establish the information to be included in the application for, the requirements for issuance and continuation of, and the fees for viatical settlement broker license.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 allows the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Insurance Code. KRS 304.15-700 provides that the commissioner shall promulgate administrative regulations to provide for the licensing of viatical settlement brokers and the termination or revocation of the license. KRS 304.15-720 provides that the commissioner promulgate administrative regulations to establish appropriate requirements and fees for viatical settlement broker license.

(d) It is expected that this administrative regulation will provide benefits by prescribing and providing the application for viatical settlement brokers and establishing the fees, as well as setting out the procedures and specific requirements for pre-licensing courses, examinations, and continuing education for viatical settlement brokers.



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(e) The administrative regulation will be implemented by providing the application for viatical settlement brokers, as well as applying the standards and procedures for approval of preclicensing courses, examinations, and continuing education for viatical settlement brokers. (2 of the other new administrative regulations will address the licensing of viatical settlement providers and the revocation and termination of the licenses, and move these regulations to Subtitle 9 with most of the department's other licensing provisions. The 2 remaining new administrative regulations will set out the reporting and general requirements for viatical settlement transactions and will repeal the existing 806 KAR 15:040.)

February 8, 2001

- (1) **806 KAR 9:320**, Viatical settlement provider license.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for March 21, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 by an administrative body or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree in writing to be present at a public hearing.
- (b) If a request for a public hearing and an agreement to attend the public hearing are not received from the required number of persons at least 10 calendar days prior to March 21, 2001, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Suetta W. Dickinson, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, or contact Suetta Dickinson at telephone number (502) 564-6075 or at facsimile number (502) 564-1453.
- (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) Persons wishing to make written comments should mail their written comments to the Department of Insurance at the address listed above or send it by facsimile to the above number.
- (7)(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.
- (8) 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, 304.15-700, and 304.15-720.
  - (b) The administrative regulation that the department intends to promulgate (along with 4 other new companion administrative regulations) will replace 806 KAR 15:040 and move the licensing provisions to Subtitle 9 with most of the department's other licensing provisions. This administrative regulation will establish the information to be included in the application for, the requirements for issuance and continuation of, and the fees for viatical settlement provider license.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 allows the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Insurance Code. KRS 304.15-700 provides that the commissioner shall promulgate administrative regulations to provide for the licensing of viatical settlement providers and the termination or revocation of the license. KRS 304.15-720 provides that the commissioner promulgate administrative regulations to establish appropriate requirements and fees for viatical settlement provider license.
  - (d) It is expected that this administrative regulation will provide benefits by prescribing and providing the application for viatical settlement providers and establishing the fees, as well as setting out the procedures and specific requirements for issuance and continuation of viatical settlement provider licenses.
- (e) The administrative regulation will be implemented by providing the application for viatical settlement providers, as well as applying the standards and procedures for licensing of viatical settlement providers. (2 of the other new administrative regulations will address the licensing of viatical settlement brokers and the revocation and termination of the licenses, and move these regulations to Subtitle 9 with most of the department's other licensing provisions. The 2 remaining new administrative regulations will set out the reporting and general requirements for viatical settlement transactions and will repeal the existing 806 KAR 15:040.)

February 8, 2001

- (1) **806 KAR 9:330**, Termination or revocation of viatical settlement broker and viatical settlement provider licenses.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for March 21, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 by an administrative body or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree in writing to be present at a public hearing.
- (b) If a request for a public hearing and an agreement to attend the public hearing are not received from the required number of persons at least 10 calendar days prior to March 21, 2001, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Suetta W. Dickinson, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, or contact Suetta Dickinson at telephone number (502) 564-6075 or at facsimile number (502) 564-1453.
- (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) Persons wishing to make written comments should mail their written comments to the Department of Insurance at the address listed above or send it by facsimile to the above number.
- (7)(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.
- (8) 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, 304.15-700, and 304.15-720.
  - (b) The administrative regulation that the department intends to promulgate (along with 4 other new companion administrative regulations) will

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replace 806 KAR 15:040 and move the licensing provisions to Subtitle 9 with most of the department's other licensing provisions. This administrative regulation will establish the standards for termination or revocation of viatical settlement broker license and viatical settlement provider license.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 allows the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Insurance Code. KRS 304.15-700 provides that the commissioner shall promulgate administrative regulations to provide for the termination or revocation of viatical settlement broker license and viatical settlement provider license. KRS 304.15-720 provides that the commissioner promulgate administrative regulations to establish appropriate requirements for viatical settlement broker license and viatical settlement provider license.

(d) It is expected that this administrative regulation will provide benefits by setting out the standards and procedures for terminating or revoking the licenses of viatical settlement brokers and viatical settlement providers.

(e) The administrative regulation will be implemented by providing the standards for and applying the procedures to the termination or revocation of licenses of viatical settlement brokers and viatical settlement providers. (2 of the other new administrative regulations will address the licensing of viatical settlement brokers and viatical settlement providers, and move these regulations to Subtitle 9 with most of the department's other licensing provisions. The 2 remaining new administrative regulations will set out the reporting and general requirements for viatical settlement transactions and will repeal the existing 806 KAR 15:040.)

February 08, 2001

(1) **806 KAR 15:041**, Repeal of 806 KAR 15:040, Licensing, reporting, and general requirements for viatical settlement providers and brokers.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for March 21, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 by an administrative body or an association having at least 5 members; and

2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree in writing to be present at a public hearing.

(b) If a request for a public hearing and an agreement to attend the public hearing are not received from the required number of persons at least 10 calendar days prior to March 21, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Suetta W. Dickinson, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, or contact Suetta Dickinson at telephone number (502) 564-6075 or at facsimile number (502) 564-1453.

(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) Persons wishing to make written comments should mail their written comments to the Department of Insurance at the address listed above or send it by facsimile to the above number.

(7)(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.

(8) 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 intends to promulgate will repeal 806 KAR 15:040 (as part of the overall plan to use 4 other new companion administrative regulations to replace 806 KAR 15:040).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 allows the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Insurance Code.

(d) It is expected that this administrative regulation will repeal 806 KAR 15:040 in order to improve the implementation 2000 HB 453, allow for the licensing provisions of viatical settlement brokers and viatical settlement providers to be moved to Subtitle 9 and placed with most of the department's other licensing provisions, and provide for more stringent regulation of viatical settlement transactions and licensees as intended by 2000 HB 453.

(e) The administrative regulation will be implemented by repealing 806 KAR 15:040.

February 8, 2001

(1) **806 KAR 15:050**, Reporting and general requirements for viatical settlement providers and brokers.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for March 21, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main 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 by an administrative body or an association having at least 5 members; and

2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree in writing to be present at a public hearing.

(b) If a request for a public hearing and an agreement to attend the public hearing are not received from the required number of persons at least 10 calendar days prior to March 21, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Suetta W. Dickinson, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, or contact Suetta Dickinson at telephone number (502) 564-6075 or at facsimile number (502) 564-1453.

(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) Persons wishing to make written comments should mail their written comments to the Department of Insurance at the address listed above or send it by facsimile to the above number.

(7)(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.

(8) 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 and 304.15-720.

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(b) The administrative regulation that the department intends to promulgate (along with 4 other new companion administrative regulations) will replace 806 KAR 15:040. This administrative regulation will establish the standards for viatical settlement contracts and other forms, establish the information to be included in disclosures and reports, establish advertising standards, and specify general rules and prohibited practices with respect to viatical settlement transactions, viatical settlement providers, and viatical settlement brokers.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 allows the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Insurance Code. KRS 304.15-720 provides that the commissioner promulgate administrative regulations to implement KRS 304.15-020 and 304.15-700 to 304.15-720. Amendments to these laws by the 2000 General Assembly require that the commissioner promulgate administrative regulations to accommodate the more stringent regulation of viatical settlement transactions, viatical settlement brokers, and viatical settlement providers.

(d) It is expected that this administrative regulation will provide benefits by setting forth standards for viatical settlement contracts, other forms, and advertisements; by identifying the information to be included in disclosures and reports; and by specifying the general rules and prohibited practices related to viatical settlement transactions.

(e) The administrative regulation will be implemented by setting forth the reporting and general requirements related to viatical settlement transactions. (3 of the other new administrative regulations will address the licensing of viatical settlement brokers, the licensing of viatical settlement providers, the revocation and termination of the licenses, and move these regulations to Subtitle 9 with most of the department's licensing provisions. The fourth new administrative regulation will repeal the existing 806 KAR 15:040.)

### KENTUCKY PUBLIC SERVICE COMMISSION

February 14, 2001

(1) **807 KAR 5:080.** Safeguards concerning nonregulated activities of utilities or utility affiliates.

(2) The Kentucky Public Service Commission intends to promulgate a new 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 March 28, 2001, at 9 a.m., Eastern Daylight Time, in Hearing Room 1, 211 Sower Boulevard, 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 calendar days prior to March 28, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Doug Hendrix, Staff Attorney, Division of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602, telephone (502) 564-3940; facsimile (502) 564-7279.

(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 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 278.2201 allows the commission to promulgate regulations relating to KRS 278.2201-2219. KRS 278.2201 states that a utility may not subsidize the nonregulated activity of a utility or an affiliate of a utility. KRS 278.2213 authorizes the commission to require utilities to file annual reports containing information related to affiliate transactions. In addition, that statute prohibits the use of a utility's trademark, brand or logo by an affiliate unless accompanied by a disclaimer. KRS 278.2203 allows utilities to use current cost allocation methods set forth in service agreements existing as of July 14, 2000 unless the commission determines that the utility entered into the service agreement to avoid the provisions of KRS 278.010 to 278.450. This statute also sets forth a threshold under which a utility may report incidental nonregulated activity as regulated. KRS 278.2205 requires utilities to file a statement with the commission regarding the development of cost allocation manuals and the public nature of these documents. That statute also directs utilities to amend the cost allocation manual to reflect any material change required to be listed in the manual within 60 days of the material change. KRS 278.280(1) authorizes the commission to establish proper procedures and practices to be observed in regard to a utility's practices.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will prescribe specifications for the disclaimer required to be used by an unregulated affiliate of a utility using the name, trademark, brand or logo of the utility; will prescribe procedures to be used by a utility when filing with the commission notice of proposed unregulated activities; will specify the format of, and the documents to be included in, filings to be made pursuant to this section; and will determine the manner in which a utility will report incidental nonregulated activity as regulated, including the time period in which that information shall be reported to the commission. The commission also seeks comment regarding other requirements, if any, needed to fully implement the statutory provisions governing nonregulated activities of utilities or utility affiliates.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 278.2201 provides that a utility may not subsidize a nonregulated affiliate. KRS 278.2213 allows the affiliate to rely upon the utility's name, brand, logo or trademark only when coupled with a disclaimer advising consumers that the affiliate is a separate corporate entity and not the utility. KRS 278.2213 requires a utility to inform the commission of any new activities the utility or its affiliate will undertake and authorizes the commission to require utilities to file annual reports regarding affiliate transactions. KRS 278.2203 allows utilities to use current cost allocation methods set forth in service agreements existing as of July 14, 2000 unless the commission determines the utility entered into the service agreement to avoid the provisions of KRS 278.010 to 278.450. This statute also sets forth a threshold under which a utility may report incidental nonregulated activity as regulated. KRS 278.2205 requires utilities to file a statement with the commission regarding the development of cost allocation manuals and the public nature of these documents. That statute also directs utilities to amend the cost allocation manual to reflect any material change required to be listed in the manual within 60 days of the material change. The administrative regulation the commission proposes to promulgate is necessary in order fully to implement the requirements of KRS 278.2201-2219.

(d) The benefits expected from the proposed administrative regulation are: KRS 278.2201-2219 will be fully implemented; consumer confusion regarding the identity of the entity operating under the name of a utility will be limited; safeguards against subsidization of nonregulated services by captive ratepayers will be established; utilities will be informed regarding any documents they must file, including the time table and format of any filing.

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(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

- (1) **815 KAR 25:011**, Repeal of 815 KAR 25:010 and 815 KAR 25:030.
- (2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person 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 March 21, 2001, the public hearing will be cancelled.
- (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, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (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 227.590.
- (b) The department intends to promulgate an administrative regulation to repeal 2 existing regulations to revamp 815 KAR Chapter 25 of this agency's administrative regulations dealing with manufactured homes.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: It is necessary to repeal these administrative regulations in order to replace them with new regulations for a better understanding of the licensing requirements of dealers as well as manufacturers, construction standards, certification of installers and the requirements of site preparation.
- (d) The benefits expected from this administrative regulation are: These administrative regulations are being replaced for clarification of the requirements dealing with manufactured homes.
- (e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

- (1) **815 KAR 25:050**, Administration and enforcement of manufactured housing construction standards.
- (2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person 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 March 21, 2001, the public hearing will be cancelled.
- (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, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (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 227.570 and 227.590.
- (b) The department intends to promulgate an administrative regulation establishing the criteria governing the standards for the manufacture, design, installation and sale of new and used manufactured homes.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulation governing standards for the manufacture and sale of manufactured homes.
- (d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupiers of new and used manufactured homes.
- (e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

- (1) **815 KAR 25:060**, Licensing of manufactured home retailers.
- (2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person or an administrative body or an association having at least 5 members; and

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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 March 21, 2001, the public hearing will be cancelled.

(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, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(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 227.570 and 227.590.

(b) The department intends to promulgate an administrative regulation establishing the criteria governing the standards for the manufacture, design, installation and sale of new and used manufactured homes.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulations governing standards for the manufacture and sale of manufactured homes. This administrative regulation allows the arrangement between a developer and a licensed dealer for the sale of homes. It also establishes a broker/dealer license, and a special event license.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupiers of new and used manufactured homes.

(e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

(1) **815 KAR 25:070**, Licensing of manufacturers of manufactured homes.

(2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person 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 March 21, 2001, the public hearing will be cancelled.

(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, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(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 227.570 and 227.590.

(b) The department intends to promulgate an administrative regulation establishing standards for licensing the manufacturers of manufactured homes.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulations governing standards for the manufacture and sale of manufactured homes. This administrative regulation establishes a manufacturer license or certificate of acceptability.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupiers of new and used manufactured homes.

(e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

(1) **815 KAR 25:080**, Requirements for certifying manufactured home installers.

(2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person 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 March 21, 2001, the public hearing will be cancelled.

(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, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(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.

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(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.570 and 227.590.

(b) The department intends to promulgate an administrative regulation establishing minimum standards for preparing for and installing a manufactured home on a permanent foundation.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulations governing standards for the manufacture and sale of manufactured homes. This administrative regulation establishes minimum installation standards for a manufactured home; requirements for installer certification and continuing education for renewal.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupiers of new and used manufactured homes.

(e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

(1) **815 KAR 25:090**, Site preparation and installation minimum requirements.

(2) The department 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 10 a.m., local time, on Wednesday, March 21, 2001, 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 1 person 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 March 21, 2001, the public hearing will be cancelled.

(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, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(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'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 227.570 and 227.590.

(b) The department intends to promulgate an administrative regulation establishing criteria for making manufactured home installations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulations governing standards for the manufacture and sale of manufactured homes. This administrative regulation establishes criteria for making manufactured home installations, site preparation, foundation construction and anchoring required by the manufacturer's instructions.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupiers of new and used manufactured homes.

(e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

February 15, 2001

(1) **815 KAR 30:010**, LP Gas license; financial responsibility required.

(2) The Department of Housing, Buildings and Construction 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 Wednesday, March 21, 2001, at 10 a.m., local time, in the Department of Housing'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 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 March 21, 2001, the public hearing will be cancelled.

(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, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(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'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 234.120.

(b) The department intends to amend 815 KAR 30:010 by creating a new section governing bulk storage facilities to require 24-hour emergency business office contact.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This amendment will require that the bulk storage outlet facilities provide a means of contact for immediate response to propane emergencies around the clock and to have an office for State Fire Marshal representatives and customers to file complaints.

(d) The benefits expected from this administrative regulation are: To assure that customers have sufficient service in times of need.

(e) This administrative regulation will be implemented by hazardous material inspectors.

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- (1) **815 KAR 30:015**, LP gas licensee disciplinary proceedings.
- (2) The Department of Housing, Buildings and Construction 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 Wednesday, March 21, 2001, at 10 a.m., local time, in the Department of Housing'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 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 March 21, 2001, the public hearing will be cancelled.
- (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, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (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'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 234.120.
  - (b) The department intends to promulgate 815 KAR 30:015 which will establish the procedures and criteria for actions to revoke, suspend or fine LP gas dealers.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation will establish the criteria and processes relating to actions to revoke, suspend or fine LP gas licensees for violation of fire safety standards and other applicable laws.
  - (d) The benefits expected from this administrative regulation are: LP gas dealers will be better aware of their responsibilities under their licenses and the public will be better protected with this process.
  - (e) This administrative regulation will be implemented by Hazardous Material Section of the State Fire Marshal's Office.

### CABINET FOR HEALTH SERVICES Office of Inspector General

January 29, 2001

- (1) **902 KAR 20:370**. Operation and services; private duty nursing agency.
- (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 March 30, 2001, 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 March 30, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-B, 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."
- (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, 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 administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
  - (b) The cabinet intends to promulgate 902 KAR 20:370 to establish the minimum requirements for the operations and services of private duty nursing agencies. This regulation will comply with drafting requirements of KRS Chapter 13A.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of, and services provided by private duty nursing agencies.
  - (d) The benefit expected from the proposed administrative regulation is that private duty nursing agencies will be able to receive a license to operate.
  - (e) The administrative regulation will be implemented as follows: By the Office of the Inspector General, Cabinet for Health Services.



**VOLUME 27, NUMBER 9 – MARCH 1, 2001**

**Department for Medicaid Services**

February 15, 2001

- (1) **907 KAR 1:013E**, Payments for hospital inpatient services
- (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 March 30, 2001, at 9 a.m., in the Cabinet 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 March 30, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill 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 Member and Provider Services, 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 907 KAR 1:013E, Payments for hospital inpatient services, are KRS 194A.030, 194A.050, 205.560(2), 205.637, 205.640, 216.380(10), 2000 Ky. Acts ch. 310 and 439, , 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396 a, b, d, r-4, 1395 f(l), x(mm), 902 KAR 20:180 and 902 KAR 20:240.
  - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:013E, Payments for hospital inpatient services, to comply with provisions of KRS 216.380 by establishing critical access hospital payment methodology.
  - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the payment methodology for hospital inpatient services.
  - (d) The benefits expected from this administrative regulation are: Recipients will receive medically necessary critical access hospital services and providers will receive equitable payments.
  - (e) The administrative regulation will be implemented as follows: By the Division of Physical Health, Department for Medicaid Services, Cabinet for Health Services, Administrative Regulation Coordinator, Department for Medicaid Services, Division of Member and Provider Services, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.



EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 15, 2001

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY  
10 KAR 3:020E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to provide for the establishment of telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and one (1) each in western Kentucky and eastern Kentucky, with the sites to be determined by the Telehealth Board. The emergency status of these administrative regulations is justified by language in KRS 13A.190(1)(a) concerning the protection of human health. This action must be taken on an emergency basis to provide for the establishment of telehealth training centers without which the provision of medical and technical assistance to the telehealth network will not be possible, leaving the Telehealth Board unable to improve access to healthcare resources. The adverse effect that further delay in the establishment of telehealth training centers would have on the protection of human health can be offset to a considerable extent by the Telehealth Board being enabled to immediately take action to establish the telehealth training centers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
DR. KIMBERLY WILLIAMS, Chair

GOVERNOR'S OFFICE FOR TECHNOLOGY  
Telehealth Board  
(New Emergency Administrative Regulation)

10 KAR 3:020E. Establishing and funding telehealth network training centers.

RELATES TO: KRS 11.550, 45A.605, 197.020, 205.510, 205.559, 211.195, 304.17A-005, 304.17A-138, 310.200, 311.550, 311.5975, 312.220, 313.255, 314.155, 314A.230, 315.310, 319.140, 319A.300, 320.390, 327.200, 334A.200, 335.158, 335.380

STATUTORY AUTHORITY: KRS 11.550(3)

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and one (1) each in western Kentucky and eastern Kentucky, with the sites to be determined by the board as stated herein; and to establish basic criteria therefor.

Section 1. Training Center Basic Criteria. (1) The training centers are established for the purpose of promoting telehealth activities.

(2) The training centers will be equipped and staffed to provide technical training for telehealth applications.

(3) The training centers will oversee the development of continuing education programs designed to familiarize practitioners throughout the Commonwealth with telehealth applications.

(4) The training centers will train practitioners implementing telehealth applications.

(5) The training centers will meet clinical, professional, and technical standards as determined by the Telehealth Board.

Section 2. University Training Center Participation. The training centers at the University of Kentucky and the University of Louisville shall be awarded funding once a Memorandum of Agreement (MOA) is entered into between the university and the Telehealth Board for that purpose.

Section 3. Other Training Center Participation. The training center sites in western Kentucky and eastern Kentucky shall be determined by the Telehealth Board pursuant to the provisions of KRS Chapter 45A.

Section 4. Disbursement of Funds. Disbursement of funds shall be determined by the Telehealth Board based on the availability of funding.

Section 5. Reporting Requirements. The training centers shall submit semiannual progress reports to the Telehealth Board based on criteria developed by the Telehealth Board.

PAUL E. PATTON, Governor  
DR. KIMBERLY WILLIAMS, Chair  
APPROVED BY AGENCY: February 14, 2001  
FILED WITH LRC: February 15, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Veno, Governor's Office For Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228, Ext. 191, FAX (502) 573-1458.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the establishment of telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and 1 each in western Kentucky and eastern Kentucky, with the sites to be determined by the board as stated herein; and establishes basic criteria therefor, as required by KRS 11.550(3).

(b) The necessity of this administrative regulation: (See (d) below)

(c) How this administrative regulation conforms to the content of the authorizing statutes: (See (d) below)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: (See below)

STATUTORY AUTHORITY: KRS 11.550(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to establish telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and 1 each in western Kentucky and eastern Kentucky, with the sites to be determined by the board as stated herein; and to establish basic criteria therefor.

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

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

(b) The necessity of the amendment to this administrative regulation: See (2) (a) above.

(c) How the amendment conforms to the content of the authorizing statutes: Same as above: (1)(d) and (2)(a)

(d) How the amendment will assist in the effective administration of the statutes: Same as above: (1)(d) and (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation shall apply to the Telehealth Board and to the training centers established hereunder.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation enables the establishment of telehealth training centers at the University of Kentucky, University of Louisville, the pediatric-affiliated hospitals at the University of Kentucky and the University of Louisville, and 1 each in western Kentucky and eastern Kentucky, at sites determined by the board.

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

(a) Initially: \$320,000

(b) Continuing basis: \$380,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budget appropriation by the 2000 General Assembly of \$1,100,000 to the Telehealth Board to be administered by the Governor's Office For Technology.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No. This administrative regulation merely provides for the establishment of telehealth training centers and the funding thereof.

(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

#### STATEMENT OF EMERGENCY 10 KAR 3:030E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to provide for the establishment and funding of telehealth network rural sites, as mandated by KRS 11.550. This network will establish a maximum of twenty-five (25) rural sites based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the telehealth network, ten (10) local health departments. This action must be taken on an emergency basis to create the telehealth network which will improve access to healthcare resources. The emergency status of these administrative regulations is justified by language in KRS 13A.190(1)(a) concerning the protection of human health. This action must be taken on an emergency basis to provide for the establishment of a telehealth network without which the Telehealth Board will be unable to improve access to healthcare resources. The adverse effect that further delay in the establishment of the telehealth network would have on the protection of human health can be offset to a considerable extent by the Telehealth Board being enabled to immediately take action to establish the rural sites. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
DR. KIMBERLY WILLIAMS, Chair

#### GOVERNOR'S OFFICE FOR TECHNOLOGY Telehealth Board (New Emergency Administrative Regulation)

10 KAR 3:030E. Establishing and funding telehealth network rural sites.

RELATES TO: KRS 11.550, 45A.605, 197.020, 205.510, 205.559, 211.195, 304.17A-005, 304.17A-138, 310.200, 311.550, 311.5975, 312.220, 313.255, 314.155, 314A.230, 315.310, 319.140, 319A.300, 320.390, 327.200, 334A.200, 335.158, 335.380

STATUTORY AUTHORITY: KRS 11.550(3)

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to develop a telehealth network, to coordinate with the training centers, of no more than twenty-five (25) rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the Telehealth Network, ten (10) local health departments, five (5) of which shall be administered by the University of Kentucky and five (5) of which shall be administered by the University of Louisville. This administrative regulation also establishes basic criteria therefor.

Section 1. Definitions. (1) "Health care facility" means a hospital including, but not limited to, a physical health hospital, psychiatric hospital, or rehabilitation center; or a clinic, private practitioner's office, public health facility, nursing home or assisted living center, community mental health/mental retardation facility, school clinic, correctional facility clinic, and other facilities that normally provide health care services such as an outpatient dialysis center; or a patient's home for home health services.

(2) "Health professional(s) shortage area (HPSA)" means:

(a) An urban or rural area;

(b) A population group; or

(c) A public or private nonprofit medical facility or other public facility that has a shortage of health-care professionals as determined by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 CFR Part 5.

(3) "Medically underserved area (MUA)" means an urban or rural area designated by the Secretary of the U.S. Department of Health and Human Services as an area with a shortage of personal health services, or a population group designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of such services pursuant to 42 CFR Part 51c.

(4) "Rural site" means a health care facility in a county with a population of less than 100,000 people, based on the 1990 Census Data developed by the State Data Center at the University of Louisville, that serves as a regional health care provider to one (1) or more counties designated as a health professional shortage area (HPSA) or medically underserved area (MUA), or is a designated HPSA or MUA county as identified by the Bureau for Health Care Data Services (BHCDNet), updated 8/07/2000.

(5) "Telehealth" means the use of interactive audio, video, or other electronic media to improve access to health resources. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education.

Section 2. Rural Sites Basic Criteria. To be selected as a rural site on the telehealth network, the following criteria shall be met:

(1) The site shall be defined as a health care facility.

(2) The site shall meet the definition of a rural site.

(3) The site shall comply with all federal and state laws and administrative regulations.

(4) The site shall be required to sign and comply with all terms and conditions contained in its contract with the board.

(5) The site shall comply with all criteria, protocols, and standards as set forth by the board.

Section 3. Rural Site Selection Process. The Telehealth Board shall make the rural site selections pursuant to the provisions of KRS Chapter 45A and based on the availability of funding.

Section 4. Local Health Department Selection Process. The Telehealth Board shall make the local health department selections pursuant to criteria established by the Telehealth Board for that purpose and based on the availability of funding. Local health departments so selected will enter into a Memorandum of Agreement (MOA) between the local health department, the Telehealth Board, and the University

that will administer the program.

Section 5. Disbursement of Funds. Disbursement of funds shall be determined by the Telehealth Board based on the availability of funding. Successful applicants shall be notified pursuant to the provisions of KRS Chapter 45A.

Section 6. Reporting Requirements. The Telehealth Network rural sites shall submit semi-annual progress reports to the Telehealth Board based on criteria developed by the Telehealth Board.

PAUL E. PATTON, Governor  
DR. KIMBERLY WILLIAMS, Chair

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Veno, Governor's Office For Technology, 193 Versailles Road, Suite 63, Frankfort, Kentucky 40601, (502) 573-0228, Ext. 191, FAX (502) 573-1458.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the development of a telehealth network, to coordinate with the training centers, of no more than 25 rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, the board may identify, for participation in the telehealth network, 10 local health departments, 5 of which shall be administered by the University of Kentucky and 5 of which shall be administered by the University of Louisville. This administrative regulation also establishes basic criteria therefor.

(b) The necessity of this administrative regulation: (See (d) below)

(c) How this administrative regulation conforms to the content of the authorizing statutes: (See (d) below)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: (See below)

STATUTORY AUTHORITY: KRS 11.550(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11.550(3) requires the Telehealth Board to promulgate administrative regulations relating to the establishment of telehealth training centers, the development of a telehealth network of rural sites, the establishment of protocols and standards to be followed by the training centers and rural sites, and the maintenance of the central link for the network with the Kentucky information highway. This administrative regulation is promulgated to develop a telehealth network, to coordinate with the training centers, of no more than twenty-five (25) rural sites, to be established based on the availability of funding and in accordance with criteria set by the Board. In addition to these rural sites, the Board may identify, for participation in the Telehealth Network, ten (10) local health departments, five (5) of which shall be administered by the University of Kentucky and five (5) of which shall be administered by the University of Louisville. This administrative regulation also establishes basic criteria therefor.

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

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

(b) The necessity of the amendment to this administrative regulation: See (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: Same as above: (1)(d) and (2)(a)

(d) How the amendment will assist in the effective administration of the statutes: Same as above: (1)(d) and (2)(a)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation shall apply to the Telehealth Board and to the Telehealth Network rural sites established hereunder.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation enables the development of a telehealth network, to coordi-

nate with the training centers, of no more than 25 rural sites, to be established based on the availability of funding and in accordance with criteria set by the board. In addition to these rural sites, under this regulation the board may identify, for participation in the Telehealth Network, 10 local health departments, 5 of which shall be administered by the University of Kentucky and 5 of which shall be administered by the University of Louisville.

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

(a) Initially: \$240,000

(b) Continuing basis: \$290,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budget appropriation by the 2000 General Assembly of \$1,100,000 to the Telehealth Board to be administered by the Governor's Office For Technology.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No. This administrative regulation merely provides for the establishment of telehealth training centers and the funding thereof.

(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

#### STATEMENT OF EMERGENCY 202 KAR 7:030E

This emergency administrative regulation establishes requirements to prescribe a schedule of fees and charges for services to emergency medical technicians. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:030 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:030E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:030E. Fees.

RELATES TO: KRS 311.6541, 311.6561

STATUTORY AUTHORITY: KRS 311.6523, 311.6561

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to emergency medical technicians and KRS 311.6561 permits the Kentucky Board of Emergency Medical Services to prescribe a schedule of fees and charges for services to emergency medical technicians. The function of this administrative regulation is to establish a fee schedule.

Section 1. Fees. (1) The following schedule of fees is established pursuant to KRS 311.6561:

(a) EMT certification, examination fee: nineteen (19) dollars;

(b) EMT recertification fee: nineteen (19) dollars;

(c) EMT-first responder certification, examination fee: thirteen (13) dollars;

(d) EMT-first responder recertification fee: thirteen (13) dollars.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

## VOLUME 27, NUMBER 9 – MARCH 1, 2001

MARK K. BAILEY, Chairperson  
APPROVED BY AGENCY: February 13, 2001  
FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moliney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the schedule of fees and charges for EMT's and EMT first responders.

(b) The necessity of this administrative regulation: Establishes fees for EMT's and first responders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6561 requires KBEMS to prescribe reasonable fee schedules for EMT's and first responders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes reasonable fees for EMT's and first responders.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 10,671 EMT's and 2,729 EMT first responders.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes fees to be paid by EMT's examination, certification and recertification, first responder examination, certification and recertification.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Establishes fees that are identical to the same fees established by the Cabinet for Health Services, Emergency Medical Services Branch.

(9) TIERING: Is tiering applied? EMT's are to pay higher examination, certification and recertification fees than are first responders due to the nature of the differences in the examination, certification and recertification processes.

### 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. Any local government that administers EMT services.

3. State the aspect or service of local government to which this administrative regulation relates. It sets a fee schedule for EMTs who may be employed by local governments that administer EMT 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 to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Payment of fees if local government incurs such fees as part of its service.

Other Explanation: Any additional administrative cost resulting from compliance with administrative regulations. Amount unknown.

### STATEMENT OF EMERGENCY 202 KAR 7:050E

This emergency administrative regulation establishes requirements for examination, certification and recertification of the basic level of emergency medical technicians. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:050 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:050E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:050E. Requirements for examination, certification and recertification of the emergency medical technician-basic.

RELATES TO: KRS 311.6531, 311.6541, 311.6561, 311.6577, 311.990(21)

STATUTORY AUTHORITY: KRS 311.6523, 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for examination, certification and recertification of the basic level of emergency medical technicians.

Section 1. Applicant Requirements for Emergency Medical Technician-basic (EMT-B) Certification. An applicant shall be eligible for initial Kentucky EMT-B certification if the applicant:

(1) Completes the U.S. Department of Transportation (DOT), National Highway Traffic Administration, 1994 National Standard Curriculum (NSC), Emergency Medical Technician-Basic and the course requirements established in 202 KAR 7:060;

(2) Is at least eighteen (18) years of age before admission to the Kentucky EMT-B certification examinations;

(3) Successfully passes the Kentucky EMT-B practical and written certification examination;

(4) Obtains National Registry of Emergency Medical Technicians (NREMT) registration;

(5) Becomes Kentucky-certified within two (2) years after the EMT-B course completion date;

(6) Understands, reads, speaks, and writes the English language at a minimum of a Level 4 (9th to 12th grade of education comprehension and performance). The board or an EMS educational institution may require testing to verify this requirement;

(7) Submits a signed "Application for Emergency Medical Technician Basic Initial Certification," for candidates having started an EMT-B course or the certification process prior to the effective date of this administrative regulation;

(8) Holds a high school diploma or equivalent;

(9) Pays the fee as required by 202 KAR 7:030; and

(10) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

Section 2. EMT-B Certification Examination. (1) The board shall prescribe a practical skills and written EMT-B certification examination that shall utilize the practical and written testing requirements of:

(a) The 1994 National Registry of EMT-B Practical Examination Users Guide; and

(b) The 1994 National Registry for Emergency Medical Technicians (NREMT) EMT-B Examination Coordinators Manual.

(2) An EMS testing agency that has been approved pursuant to 202 KAR 7:094 may administer the EMT-B certification examination.

Section 3. Expiration of Certification. (1) Unless it is renewed, the initial certification period of an EMT-B shall expire three (3) months after the expiration of the initial NREMT registration.

(2) Upon expiration of certification, an EMT-B shall not practice as an EMT-B or perform an authorized procedure for a certified EMT-B described in 202 KAR 7:080, other than a procedure for which the individual can show proof as authorized by statute or other Kentucky administrative regulations, until the board has:

(a) Received and reviewed the individual's application for completeness and compliance with this administrative regulation;

(b) Processed the application; and

(c) Issued a new certificate to the applicant or provided other written verification of the certification of the applicant.

(3) If the certification of an EMT-B expires, before the applicant may be eligible for certification again the applicant shall, within two (2) years from the certification expiration date:

(a) If not registered as a National Registry of Emergency Medical Technicians (NREMT) Basic, complete the eligibility requirements for NREMT-Basic registration and submit to the board:

1. Written evidence of completion of current training in cardiopulmonary resuscitation (CPR) as referenced in Section 4(1)(a) of this administrative regulation;

2. Written evidence of completion of current HIV/AIDS training as required by KRS 311.6531;

3. The applicable fee as required in 202 KAR 7:030;

4. A signed "Application for Emergency Medical Technician Basic Initial Certification"; and

5. Not be subject to disciplinary action pursuant to 202 KAR 7:090; or

(b) If registered with the National Registry of Emergency Medical Technicians (NREMT) as a NREMT basic shall submit to the board:

1. Written evidence of current NREMT-B registration; and

2. Meet all other requirements as established in paragraph (a) of this subsection; or

(c) Retake an entire EMT-B course and pass the EMT-B practical skills and written certification examination, and meet the requirements established in paragraph (a) of this subsection.

Section 4. Recertification and Continuing Education Requirements. (1) A Kentucky-certified EMT-B who submits an application for recertification and who has not chosen to meet the requirements of and obtain NREMT-B registration shall be eligible for certification renewal, if the applicant:

(a) Submits to the board:

1. A signed "Application for Emergency Medical Technician-Basic Certification Renewal";

2. Written evidence of completion of current training in cardiopulmonary resuscitation (CPR) that shall:

a. Meet the educational objectives of the American Heart Association; or

b. Be taught by a person authorized by the educational program that meets the educational objectives of the American Heart Association (AHA) who shall be;

(i) An instructor who meets AHA equivalent instructor criteria and teaches CPR according to the educational objectives of the AHA; or

(ii) A board EMT-B instructor; and

c. Provide instruction and testing in:

(i) One (1) rescuer cardiopulmonary resuscitation;

(ii) Two (2) rescuer cardiopulmonary resuscitation;

(iii) Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

(iv) Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

(v) Techniques for relief of obstruction of the airway;

(vi) Cardiopulmonary resuscitation of infants and small children;

(vii) Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

(viii) Use of oral and nasal airways;

(ix) Use of bag-valve-mask or other ventilatory devices; and

(x) Use of supplemental oxygen.

3. Payment of the required fee established in 202 KAR 7:030; and

4. Submits to the board on approved forms evidence of successful completion of the "EMT Basic Minimum Continuing Education Requirement" that includes: twenty-four (24) structured contact hours, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives, of continuing education that meet the equivalency of the Department of Transportation (DOT) EMT-B refresher course as established in the EMT-Basic Recertification Report form incorporated by reference. The EMT-B refresher course shall include the following minimum contact hours and topics:

(a) One (1) in preparatory;

(b) Two (2) in airway management;

(c) Three (3) in patient assessment;

(d) Four (4) in medical/behavioral emergencies;

(e) Four (4) in trauma;

(f) Two (2) in obstetrics/gynecology, infants and children;

(g) Eight (8) in general electives; and

5. A minimum of two (2) contact hours shall be in AIDS education required by KRS 214.610 and which shall be taught by a person who meets the requirements of subsection (1)(b) of this section (the two (2) hours in AIDS education may be obtained within the general elective contact hours referenced in subparagraph 1g of this paragraph);

(b) Submits to the board evidence of validation of skills maintenance by completing the form, EMT Basic Recertification Report (EMS Branch-7/99);

(c) Meets the requirements of subsection (1)(a) of this section; and

(d) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

(3) A Kentucky-certified EMT-B who has chosen to meet the requirements of and obtains NREMT-B registration shall be eligible to renew certification if the EMT-B:

(a) Is not subject to disciplinary action pursuant to 202 KAR 7:090; and

(b) Submits to the board:

1. A signed "Application for Emergency Medical Technician-Basic Certification Renewal";

2. Validation of current registration as NREMT-B;

3. Evidence of completion of the AIDS education required by KRS 311.6531; and

4. The required fee established in 202 KAR 7:030, Section 1(4)(d).

(4) An application for renewal of certification shall not be considered for renewal if:

(a) The application is postmarked to the board on or before the certification expiration date of the applicant; or

(b) Prior to the certification expiration date, the EMT-B applicant has not met the applicable requirements of subsections (1), (2) or (3) of this section.

(5) Upon written application to the board, an EMT-B who is a member of a National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 USC 121 and 673b may be given an extension for a period up to one (1) year after release from active duty or return to the United States, whichever occurs first, to meet the applicable requirements for recertification listed in subsections (1), (2) and (3) of this section.

Section 5. Reciprocity. A person shall be eligible for direct reciprocity for initial Kentucky certification as an EMT-B if the individual:

(1) Submits a signed "Application for Emergency Medical Technician Basic Initial Certification";

(2) Provides documentation that he/she currently meets the requirements of and has obtained NREMT-basic registration;

(3) Provides documentation of completion or the AIDS education required by KRS 214.610 and 311.6531;

(4) Has paid fees as required in 202 KAR 7:030; and

(5) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

Section 6. Exemptions from EMT-B Administrative Regulations. The Kentucky certification requirements for an EMT-B shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official

duties under federal laws; or

(2) An EMT-B certified in another state who comes into Kentucky to:

- (a) Transport a patient into or through the state; or
- (b) Return a patient to an out-of-state residence.

Section 7. Kentucky EMT-B Transition Course. (1) The EMT-B update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program", incorporated by reference in this administrative regulation, shall be referred to as the transition course (TC).

(2) An EMT-B currently certified in Kentucky who completed the EMT-B training based on a version of the 1984 or earlier NSC shall have completed successfully the TC before July 1, 1999.

(3) A person who obtained Kentucky EMT-B initial certification prior to July 15, 1996, who did not successfully complete the Kentucky EMT-B Transition Course nor completed a Kentucky Pilot Program EMT-B Course based on the 1994 version of the DOT National Highway Traffic Administration EMT-Basic: National Standard Curriculum (NSC) incorporated by reference in this administrative regulation, and whose certification expiration date occurs effective June 30, 1999 or thereafter, shall not be eligible for Kentucky EMT-B certification renewal. A Kentucky-certified EMT-B shall be exempt from the Kentucky TC if the individual is a:

(a) Kentucky-certified EMT-B who complete the EMT-B training and Kentucky certification in accordance with the requirements of the 1994 version of the DOT EMT-Basic: NSC;

(b) Candidate for Kentucky EMT-B certification who holds out-of-state certification and provides evidence, that prior to July 1, 1999, the candidate completed training equivalent to the EMT-B TC in another state; or

(c) Kentucky-certified EMT-B who is a licensed physician board-certified in emergency medicine by the American Association of Emergency Physicians.

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

(a) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic" (1994 Edition);

(b) The "1994 EMT-Basic Transitional Program";

(c) The "Application for Emergency Medical Technician-Basic Initial Certification", (8/99);

(d) The "1994 National Registry EMT-Basic", Examination Coordinator Manual, published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229;

(e) The "1994 National Registry of EMT-Basic Practical Examination Users Guide", published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229;

(f) The "Kentucky Board of Emergency Medical Services EMT-Basic Minimum Continuing Education Requirements, Total Contact Hours," (7/99);

(g) The "Application for Emergency Medical Technician Recertification Application" (7/99); and

(h) The "Emergency Medical Technician-Basic Recertification Application with NREMT Registration" (7/99).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes require-

ments for examination, certification and recertification of the emergency medical technician basic.

(b) The necessity of this administrative regulation: KRS 311.6541 requires KBEMS to promulgate regulations relating to EMT's including classification, certification, examination of EMT's, examinations, standards of training and experience.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes classification, certification, and examination requirements for EMT's.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes classification, certification, and examination requirements for EMTs.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 10,671 EMTs.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It establishes classification, certification, and examination requirements for EMTs.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Not used because all EMT applicants are treated similarly in all areas of examination.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY

202 KAR 7:060E

This emergency administrative regulation establishes requirements for the education and training of the emergency medical technician-basic (EMT-B). It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:060 shall be filed with



the Regulations Compiler at the same time as 202 KAR 7:060E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)**

**202 KAR 7:060E. Emergency medical technician-basic course requirements.**

RELATES TO: KRS 311.652 to 311.668

STATUTORY AUTHORITY: KRS 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541, 211.964 requires the board to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for the education and training of the emergency medical technician-basic (EMT-B).

Section 1. Training Course Requirements. (1) An EMT-B training course in Kentucky shall be conducted by an emergency medical services (EMS) educational institution that has been approved by the board pursuant to 202 KAR 7:094 to train EMT-Bs.

(2) An EMT-B training course that begins prior to the effective date of this administrative regulation shall be at least 119 hours in duration, and shall:

(a) Follow the 1994 version of the United States Department of Transportation (U.S. DOT), National Highway Traffic Administration, Emergency Medical Technician Basic: National Standard Curriculum, incorporated by reference in 202 KAR 7:050 with the exception of the modified "Elective Advanced Airway Module" established in subsection (6)(b)3 of this section as a Kentucky-required supplemental curriculum, and as established in 202 KAR 7:080, Section 2(1)(d); and

(b) Follow additional Kentucky-required supplemental curricula established in 202 KAR 7:080, Section 1(1)(a), approved by the board as described in subsections (4) and (6) of this section, and as established in 202 KAR 7:080, Section 2(1)(a), (b) and (c).

(3) Except for an EMT-B training course established in subsection (2) of this section, for an EMT-B training course starting with or after the effective date of this administrative regulation, classroom sessions, which include the DOT National Standard established in subsection (2)(a) of this section and the Kentucky-required supplemental curricula, established in subsection (2)(b) of this section, shall be at least 114.5 hours in duration. Additionally, the training program shall include the minimum required hours to complete the clinical/field rotation established in Section 2(1) of this administrative regulation.

(4) A Kentucky-required supplemental curriculum for an EMT-B initial training course for statewide use shall be that for which the printed curriculum document has been submitted to the Medical Standards Committee for:

(a) Review for appropriateness in meeting training objectives and EMT-B scope of practice; and

(b) Recommendation to the board for adoption.

(5) The recommendations of the Medical Standards Committee shall be considered by the board in adoption of a Medical Standards Committee recommended EMT-B supplemental curriculum for establishment in this administrative regulation, or a 202 KAR 7:092 established EMT first responder supplemental curriculum for statewide implementation.

(6) The Kentucky-required supplemental curricula for use in an EMT basic initial training course shall, with the effective date of this administrative regulation, include training in:

(a) Acquired immune deficiency syndrome (AIDS) as required by KRS 214.610 and 311.6531 for which the printed curriculum has been reviewed, approved and assigned an approval number by the HIV and AIDS Branch of the Cabinet for Health Services; and

(b) EMT-B training and practice requirements for the following procedures established in 202 KAR 7:080:

1. Prehospital and interfacility maintenance during transportation, monitoring and discontinuation of preestablished intravenous fluids for patient administration; and

2. Ventilation and care of a patient who has an endotracheal tube

in place, which has been inserted by advanced life support personnel (not an EMT basic).

(7) The Kentucky optional supplemental curricula for use in service specific continuing education of each employed EMT-B before authorized to perform shall, with the effective date of this administrative regulation, include the training and practice requirements for the following procedures:

(a) The use of an automated blood glucose testing device;

(b) The use of a pulse oximeter; and

(c) The use of noninvasive monitoring equipment.

(8) A service specific provider that follows the requirements of 202 KAR 7:080 and desires to conduct training for EMT basic personnel who were initially certified before the implementation of the Kentucky supplemental curricula established in subsection (6) of this section may:

(a) Use the printed documents available from the board associated with the curricula; or

(b) Use service-developed printed curricula documents that have been submitted to, reviewed and approved in accordance with subsections (4) and (5) of this section.

Section 2. Clinical or Field Rotation and Testing. (1) Consistent with the 1994 version of the U.S. DOT National Highway Traffic Administration, EMT Basic: National Standard Curriculum (NSC), and as described on page twenty-one (21) of the NSC Manual, an EMT-B training course shall require its students to complete a clinical or field rotation. To meet minimum requirements of the clinical or field rotation, each student shall:

(a) Participate for a minimum of ten (10) contact hours;

(b) Interview and assess a minimum of five (5) patients;

(c) Record the patient history and assessment on a prehospital care report form for each patient reviewed and assessed; and

(d) Repeat clinical or field setting experiences, as required, until the course lead instructor deems the student as competent within the goals established for the EMS education program.

(2) In extreme cases when EMT-B students are unable to obtain experiences in a clinical or field setting, the EMS educational institution shall file with the board a request for approval for a variance from the U.S. DOT requirement. Supportive documentation shall include:

(a) Written evidence that a good faith effort has been made to obtain sites for a clinical or field rotation with at least three (3) board licensed ambulance services or other eligible clinical or field rotation sites within a forty (40) mile radius from location of the EMS educational institution EMT-B course site; and

(b) A description of alternatives to the clinical/field rotation proposed by the EMS educational institution, consistent with those established in the 1994 version of the U.S. DOT National Highway Traffic Administration EMT Basic: National Standard Curriculum, that meet the educational objectives to be addressed by the clinical/field rotation.

(3) A request for a variance from the clinical or field rotation requirement described in subsection (1) of this section shall be reviewed by the Medical Standards Committee. The recommendations of the Medical Standards Committee shall be considered by the board in granting approval for a requested variance.

(4) An EMT-B student may begin the field internship required in subsection (1) of this section after completion of the patient assessment module of the training course.

(5) An EMT-B student shall complete the last classroom session, the clinical or field rotation requirement of subsection (1) of this section and other EMS educational institution EMT basic training program requirements, before becoming eligible to take the Kentucky EMT-B certification examination pursuant to 202 KAR 7:050, Section 2.

(6) If an EMT-B student does not successfully pass the certification examination process and become Kentucky certified within two (2) years after the EMT-B course completion date, the student shall repeat the entire EMT-B course requirements of Section 1 of this administrative regulation and the field internship requirements of subsection (1) of this section before becoming eligible to apply for EMT-B certification.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The Initial Training Curriculum, "EMT Application of a Pulse

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Oximetry" (4/00);

(b) The Emergency Medical Technician (EMT) Training Curriculum for the "EMT-B in the Monitoring of Preestablished Patient Intravenous Infusions" (4/00);

(c) The Initial Training Curriculum, "EMT-B Advanced Airway Management", as amended from the 1994 DOT EMT Basic NSC Elective Module on Advanced Airway Management (4/00);

(d) The Initial Training Curriculum, "EMT-B Maintenance and Application of END Tidal CO2 Monitoring" (4/00);

(e) The Initial Training Curriculum, "EMT-B Use of Noninvasive Temperature Monitoring", (4/00);

(f) The Initial Training Curriculum, "EMT-B Application of EKG Electrodes and Monitor" (4/00); and

(g) The "Kentucky Initial Training Curriculum for the EMT-B in Blood Glucose Analysis" (4/00).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the education and training of emergency medical technician-basic (EMT-B).

(b) The necessity of this administrative regulation: Identifies requirements for the education and training of emergency medical technician-basic (EMT-B).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires board to promulgate regulations for the certification and classification of EMTs; the standards of training and experience for EMTs, instructors, instructor trainers, students and trainees; and standards of training, experience and curricula standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies requirements for the education and training of emergency medical technician-basic (EMT-B).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 10,671 EMT-B and EMS educational institutions

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies requirements for the education and training of emergency medical technician-basic (EMT-B).

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not used as all persons certified as EMT-B are treated the same.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY 202 KAR 7:070E

This emergency administrative regulation establishes requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) and appointment as an EMT instructor trainer. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:070 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:070E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

**202 KAR 7:070E. Emergency medical technician-basic instructors and EMT-instructor trainers.**

RELATES TO: KRS 311.652, 311.658

STATUTORY AUTHORITY: KRS 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). This administrative regulation establishes the requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) or appointment as an EMT instructor trainer.

Section 1. Eligibility for Training. A person applying to become a Kentucky-certified EMT-B instructor shall be eligible for training if the applicant:

(1) Has current registration with the National Registry of Emergency Medical Technicians (NREMT) as a NREMT-basic (NREMT-B) or a NREMT-paramedic (NREMT-P);

(2) Is currently certified in Kentucky as an:

(a) EMT-B; or

(b) Paramedic;

(3) Provides documented proof of having at least two (2) years of experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical service system;

(4) Provides verification from the director or chief officer of the organization for whom the experience was provided that the experience



was obtained within the last five (5) years prior to application for training.

Section 2. EMT-B Instructor Training. (1) Except as provided in subsection (2) of this section and Section 3(6) of this administrative regulation, a person training to become a Kentucky-certified EMT-B instructor shall complete a:

(a) U.S. Department of Transportation (DOT) EMT-B instructor method of instruction (MOI) educational course conducted by a Kentucky Board of Emergency Medical Services approved emergency medical services educational institution; and

(b) Student teaching internship and evaluation for certification as required in Section 3 of this administrative regulation.

(2) A person shall not be required to meet the requirements of subsection (1)(a) of this section if the applicant holds:

(a) A bachelor's degree in education; and

(b) A valid Kentucky teaching certificate; or

(c) Documentation of successful completion of a board-approved instructor level methods of instruction (MOI) course that consists of a minimum of forty (40) contact hours that shall include:

1. Adult learning techniques;
2. How to develop a lesson plan;
3. Use of audio visuals;
4. Small group dynamics; and
5. Evaluation techniques.

Section 3. EMT-B Instructor Candidate Student Teaching Internship and Evaluation for Certification. (1) An EMT-B instructor candidate shall be eligible for and complete a student teaching and evaluation internship in which the candidate has:

(a) Met the training requirements referenced in Sections 1 and 2 of this administrative regulation;

(b) Attended a minimum of seventy-five (75) percent of scheduled class sessions of an EMT-B course conducted by a board-approved EMS educational institution;

(c) Served in various capacities under the direct supervision of a lead instructor for the EMT-B course for which the lead instructor:

1. Is a Kentucky-certified EMT-B instructor who has been certified for at least three (3) years; and

2. Has taught at least two (2) complete EMT-B training courses prior to serving as an EMT-B instructor candidate supervising instructor; and

(d) While under the direction of the supervising lead instructor, assumed total classroom responsibility on separate topics within the same EMT-B course for a minimum of ten (10) complete classroom lessons consisting of at least:

1. Five (5) lectures; and
2. Five (5) skill instruction sessions.

(2) The ten (10) lesson student teaching component described in subsection (1)(d) of this section shall be evaluated as an eligibility requirement for certification by an EMT-B instructor internship evaluation committee in accordance with the review process requirements of the 1999 EMT-B Instructor Candidate Evaluation Manual which are incorporated by reference.

(3) An EMT-B instructor teaching internship and evaluation committee shall:

(a) Consist of three (3) members as specified in the 1999 EMT-B Instructor Candidate Evaluation Manual incorporated by reference; and shall:

(b) Be authorized to terminate the evaluation process:

1. At any point for a reason established by the board-approved EMS educational institution; and

2. Providing written notice to the instructor candidate including supporting documentation regarding the reason for termination.

(4) An EMS educational institution shall be responsible for the costs associated with the preparation and evaluation of an accepted EMT-B instructor candidate.

(5) An EMS educational institution may charge an EMT-B instructor candidate an evaluation fee.

(6) A person who was notified in writing by the board when the last EMT-B instructor candidate evaluation was conducted in 1996, and between 1996 and the effective date of this administrative regulation, that the applicant has been placed on a waiting list for EMT-B instructor

candidate evaluation may be exempt from the requirements of Sections 1(1), (3), and (4) and 2(1)(a) of this administrative regulation if the individual provides documentation to the board:

(a) Of completion of an EMT-B transition course (TC) pursuant to 202 KAR 7:050, Section 7; and

(b) Of completion of a board-approved MOI educational course such as a:

1. Board-sponsored EMT-B instructor MOI taught by an EMT-B instructor trainer;

2. Level II fire service instructor; or

3. Board-approved instructor course as established in Section 2(2)(c) of this administrative regulation; or

(c) The person holds a:

1. Bachelor's degree in education; or

2. A valid Kentucky teaching certificate.

(7) A person, who is notified in writing by the board that he has met the requirements of subsection (6) of this section, may:

(a) Apply to a board-approved EMS educational institution for acceptance into an EMT-B instructor candidate teaching internship and evaluation program; or

(b) Have two (2) years from the effective date of this administrative regulation to apply to the board and be evaluated through a board-approved evaluation program according to previous regulatory requirements in which the EMT-B instructor candidate has:

1. Been evaluated by a panel of EMT-instructor trainers;

2. Received an evaluation score of no less than an absolute eighty (80) percent;

3. Attended a later scheduled annual training session for EMT-B instructor candidates who successfully met the requirements of this subsection; and

4. Completed an application for EMT-B instructor certification, accompanied by the fee required in 202 KAR 7:030;

5. If unsuccessful following a maximum of one (1) retest, applies as a new candidate who is required to meet the requirements referenced in subsection (11) of this section.

(8) If an EMT-B instructor candidate fails the evaluation process the candidate may, within two (2) years of the course completion date of the MOI as required in Section 2(1)(a) of this administrative regulation, repeat the teaching internship and evaluation until he successfully passing.

(9) If an EMT-B instructor candidate does not successfully pass the teaching internship and evaluation within two (2) years of the MOI course completion date, the entire EMT-B instructor training course shall be repeated before subsequent reevaluation.

(10) If a person who meets the requirements of subsection (6) and (7) of this section fails as an EMT-B instructor candidate to pass the evaluation process the person may, within two (2) years from the effective date of this administrative regulation, repeat the teaching internship and evaluation until the person passes.

(11) If a person who meets the requirements of subsection (6) and (7) of this section fails to successfully pass the teaching internship and evaluation within two (2) years from the effective date of this administrative regulation, the person shall:

(a) Apply as a new EMT-B instructor candidate;

(b) Meet the requirements of Sections 1 and 2 of this administrative regulation; and

(c) Repeat the entire EMT-B instructor training course before reevaluation.

(12) At the conclusion of the evaluation, the lead instructor shall submit verification of attendance and performance evaluations to the board for each EMT-B instructor candidate in accordance with the EMT-B Instructor Candidate Evaluation Manual specifications.

Section 4. EMT-B Instructor Certification. A person shall be eligible for initial certification as an EMT-B instructor if the person:

(1) Meets the requirements of Sections 1, 2, and 3(1), (2), (6) and (7) of this administrative regulation;

(2) Has obtained a recommendation for certification in accordance with the review process requirements of the 1999 EMT-B Instructor Candidate Evaluation Manual;

(3) Is not subject to disciplinary action pursuant to 202 KAR 7:090; and

(4) Within two (2) years of the completion of the MOI course as

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required in Section 2(1)(a) of this administrative regulation, or within two (2) years of the effective date of applying and acceptance for the person's first teaching internship if the candidate is exempt from Section 2(1)(a) of this administrative regulation, submits an "Application for EMT-B Instructor Initial Certification", incorporated by reference.

Section 5. Renewal of EMT-B Instructor Certification. (1) An EMT-B instructor who initially was certified prior to the effective date of this administrative regulation may continue current certification period according to previous regulatory requirements and may be eligible to renew EMT-B and EMT-B instructor certifications if the instructor:

(a) Attains twenty-four (24) hours of continuing education which may be met by:

1. Conducting an entire EMT-B course;
2. Conducting one (1) or more lessons of an EMT-B course;
3. Teaching one (1) or more lessons of an in-service or continuing education course;
4. Evaluating a Kentucky EMT-B Practical Skills Certification Examination;

5. Conducting an EMT-B instructor training course; and

(b) Attends during the two (2) year certification, at least one (1) of the following:

1. Annual state or federal EMS instructor conference approved by the board; or
2. Annual training session for new EMT-B candidates eligible for certification, for which either subparagraph 1 or 2 of this paragraph may be used as credit toward the time required in paragraph (a) of this subsection;

(c) Meets the cardiopulmonary resuscitation (CPR) requirement by either:

1. The requirements referenced in 202 KAR 7:050, Section 4(1)(a)2; or
2. Teaching a CPR course for record;

(d) Obtains the minimum of two (2) hours AIDS education required by KRS 214.610;

(e) Completes an application for EMT-B instructor recertification that shall be:

1. Signed by the EMT-B instructor; and
2. Inclusive of a statement certifying to the truth of the information supplied; and

- (f) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

(2) With the start of the next certification period following the effective date of this administrative regulation, a person who obtained initial certification from the board as an EMT-B instructor prior to the effective date of this administrative regulation shall be eligible to renew the EMT-B instructor certification if the person:

(a) Maintains evidence of current training in cardiopulmonary resuscitation (CPR) that meets the minimum requirements referenced in 202 KAR 7:050, Section 4(1)(a)2;

(b) Obtains a minimum of fifty-three (53) contact hours, providing documented evidence of completion of each, in the following categories:

1. The minimum of two (2) hours AIDS education required by KRS 214.610;
2. A minimum of three (3) contact hours on topics related to methods of instruction (MOI);

3. Conducted during the preceding two (2) years, a minimum of twenty-four (24) hours of instruction on at least three (3) different topics that are within the training requirements and the scope of practice for a Kentucky-certified EMT-B as described in 202 KAR 7:060, Section 1; and

4. Participatory involvement during the preceding two (2) years, of a minimum of twenty-four (24) hours of field experience with an ambulance service or other organization having an EMS mission (fire department, rescue squad, mining or other industry having emergency medical services) in any of the following roles of participation:

- a. Actual patient emergency responses;
- b. Agency quality assurance activities related to EMS; and
- c. Enrolled attendant, or performance as an instructor, during continuing education or agency-specific in-service sponsored by the agency, for which any hours obtained in participation as an instructor of continuing education shall be in addition to the twenty-four (24) hours of instruction referenced in subparagraph 3 of this paragraph;

(c) Completes an application for EMT-B instructor recertification that shall be:

1. Signed by the EMT-B instructor; and
2. Inclusive of a statement certifying to the truth of the information supplied;

- (d) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

(3) A person who obtains initial certification from the board as an EMT-B instructor after the effective date of this administrative regulation, shall be eligible to renew the EMT-B instructor certification if the person meets the requirements established in subsection (2) of this section.

(4) An application for renewal of certification shall not be considered if:

(a) The application is postmarked to the board more than thirty (30) days after the certification expiration date of the applicant; or

(b) Prior to the certification expiration date, the EMT-B instructor applicant has not met the requirements of subsection (1) of this section.

Section 6. An Instructor Certified in Another State. A person certified in another state as an EMT-B instructor shall be eligible for Kentucky certification as an EMT-B instructor if the person:

(1) Meets the reciprocity requirements established in 202 KAR 7:050, Section 5; and

(2) Meets the requirements of Sections 2(1)(b), 3, and 4 of this administrative regulation.

Section 7. Expiration of EMT-B Instructor Certification. (1) Unless it is renewed:

(a) The certification period of an EMT-B instructor who does not hold current registration with the National Registry of Emergency Medical Technicians as a NREMT-B or NREMT-paramedic shall expire two (2) years from the initial certification date and shall follow the same pattern for each certification renewal period thereafter; or

(b) The certification period for an EMT-B instructor who is also registered as a NREMT-B or NREMT-paramedic shall expire three (3) months after the expiration of the initial NREMT registration and shall follow the same pattern for each certification renewal period thereafter.

(2) Upon expiration of an EMT-B instructor certification, the person may not perform an authorized function of a Kentucky EMT-B instructor established in 202 KAR 7:050, 202 KAR 7:060, 202 KAR 7:080, 202 KAR 7:092, and 202 KAR 7:094.

(3) If the certification has expired for a KY EMT-B instructor initially certified prior to the effective date of these administrative regulations, and the person is a Kentucky-certified non-NREMT-B or non-NREMT-paramedic, whose EMT-B instructor certification expiration date was less than two (2) years prior to the effective date of these administrative regulations, the person may again be eligible for certification, if within two (2) years from the effective date of this administrative regulation, the person:

(a) Completes the requirements referenced in 202 KAR 7:050, Section 3(3)(a) and (b) in order to document current credentials as a:

1. NREMT-B; or
2. NREMT-paramedic; and

(b) Completes the requirements established in Section 5(1) of this administrative regulation; or

(c) Retakes all requirements established in Sections 1 through 4 of this administrative regulation.

(4) If the certification has expired for a KY EMT-B instructor initially certified after the effective date of this administrative regulation and the person additionally is a Kentucky-certified, NREMT-B or NREMT-paramedic, the person may be eligible again for certification if, within two (2) years from the EMT-B instructor certification expiration date, the person:

(a) Completes the requirements referenced in Section 5(1) of this administrative regulation; or

(b) If a Kentucky-certified non-NREMT-B or NREMT-paramedic, the person completes the requirements established in subsection (3)(a) and (b) of this section; or

(c) Retakes all requirements established in Sections 1 through 4 of this administrative regulation.

Section 8. EMT-B Instructor Trainer. (1) An EMT-B instructor shall

be eligible for appointment as an EMT instructor trainer for a period of two (2) years if the instructor:

- (a) Has current registration with the NREMT as a:
    1. NREMT-B; or
    2. NREMT-paramedic;
  - (b) Is currently a Kentucky-certified EMT-B or paramedic;
  - (c) Provides documented proof of five (5) years experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical services system;
  - (d) Has been certified in Kentucky as an EMT-B instructor for five (5) consecutive years;
  - (e) Has served as the lead instructor for at least five (5) complete EMT-B courses;
  - (f) Files, with the board, a letter of request for appointment;
  - (g) Does not have an active pending investigation by the board relating to EMT certification; and
  - (h) Has not had disciplinary action relating to EMT or EMT-instructor certification within the past five (5) years.
- (2) A person who was certified as an EMT-instructor trainer prior to the effective date of this administrative regulation shall not be required to meet the requirements of subsection (1)(a), (c), and (e) of this section for initial appointment as an EMT-instructor trainer.
- (3) A person who was certified as an EMT-instructor trainer prior to the effective date of this administrative regulation shall meet the requirements of subsection (4) of this section for reappointment as an EMT-instructor trainer.
- (4) A person shall be eligible for reappointment as an EMT-B instructor trainer if the person:
- (a) Is currently certified in Kentucky as an EMT-B;
  - (b) Is a currently certified in Kentucky as an EMT-B instructor;
  - (c) Documents attendance and participation at one (1) conference at which continuing education hours for an EMT-B instructor or EMT-FR instructor is offered; and
  - (d) Is recommended for reappointment by the board.
- (5) An EMT-B instructor trainer shall function at the request and direction of the board.
- (6) An EMT-B instructor trainer may serve as:
- (a) An instructor liaison to assist an EMS educational institution lead instructor with questions that may arise during a training program;
  - (b) An examination representative as established in 202 KAR 7:094, Section 4 for a Kentucky EMT-B or NREMT-FR practical skills certification examination;
  - (c) A member of an EMT-B instructor teaching internship and evaluation committee as required in Section 3(3) of this administrative regulation; and
  - (d) A continuing education instructor at a time or location approved by the board such as at an instructor conference.
- (7) An EMT-B instructor trainer may be utilized to provide advice and direction for the board through the Medical Standards or Committee on an issue relating to the development and implementation of a standard relating to the EMT-B and EMT-B instructor training processes;

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The United States Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, EMT Instructor Training Program, Method of Instruction;
- (b) The 1999 EMT-B Instructor Candidate Evaluation Manual (8/99);
- (c) The Application for EMT-B Instructor Initial Certification (7/99);
- (d) The Application for EMT-B Instructor Recertification, (7/99);
- (e) The Emergency Medical Technician Basic Instructor Official Form for Documentation of Contact Hour Records for Certification Renewal 4/00).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for attaining certification as an emergency medical technician-basic (EMT-B) instructor and appointment as an EMT instructor trainer.

(b) The necessity of this administrative regulation: To identify certificate requirements and qualifications for EMT-B instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires KBEMS to promulgate regulations for emergency medical technician requirements for attaining certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in establishing requirements for certification as an emergency medical technician-basic instructor appointment as an EMT instructor trainer.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect 243 EMT-B instructors and EMT Instructor trainers, 1,387 paramedics, 130 ambulance services of which are run by local governments.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes the requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) or appointment as an EMT instructor trainer.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not used because all EMT applicants are treated similarly in all areas of requirements and attaining certification as an EMT Instructor Trainer.

## 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

STATEMENT OF EMERGENCY  
202 KAR 7:080E

This emergency administrative regulation establishes procedures an emergency medical technician-basic (EMT-B) shall be authorized to perform. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:080 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:080E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)

202 KAR 7:080E. Emergency medical technician-basic authorized procedures.

RELATES TO: KRS 311.652 to 311.668  
STATUTORY AUTHORITY: KRS 311.6541  
EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish procedures which an emergency medical technician-basic (EMT-B) shall be authorized to perform.

Section 1. Authorized EMT-B Procedures. Except for the procedures authorized in Sections 2 and 3 of this administrative regulation, a Kentucky (KY) certified EMT-B shall be authorized to:

(1) Perform any of the procedures not requiring physician medical direction established in the initial training curriculum of the "U.S. Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, Emergency Medical Technician-Basic", incorporated by reference in 202 KAR 7:050, or Kentucky-required supplemental curricula that have been approved by the board following review and recommendation by the Medical Standards Committee.

(2) Of current Kentucky-required supplemental training and procedures not requiring physician medical direction that have been approved by the board established in 202 KAR 7:060 for statewide use, an EMT basic shall be authorized to:

(a) Assess patient body temperature following training according to Kentucky supplemental curriculum "Application of Noninvasive Temperature Monitoring";

(b) Transport a patient with an intravenous (I.V.) infusion entry point maintained patent by a heparin or saline lock placement, to which no I.V. infusion fluid is attached;

(c) Transport a patient encountered in a prehospital setting who has a preestablished I.V. infusion to the nearest appropriate medical facility based on local medical protocol. The preestablished I.V. infusion solution may be established on any location of the body and may contain an additive that is monitored in accordance with training in the board-approved curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician Basic (EMT-B) in the Monitoring of Preestablished Patient Intravenous Infusions" incorporated by reference in 202 KAR 7:060; and

(d) During a prehospital ambulance transport to an appropriate medical facility discontinue a preestablished infusion by closing the flow valve; or

(3) For future consideration, an EMT-B may be authorized to perform another procedure not requiring physician medical direction for which the training curriculum objectives and associated scope of practice by an EMT-B has been approved by the board following review and recommendation for approval by Medical Standards Committee, for use in a pilot program as established in Section 3 of this administrative regulation, or for statewide implementation.

Section 2. A Kentucky (KY) certified EMT-B shall be authorized to perform any procedures requiring physician medical direction, as established in the 1994 DOT EMT: Basic National Standard Curriculum, incorporated by reference in 202 KAR 7:050 or Kentucky-required supplemental curricula approved by the board pursuant to 202 KAR 7:060 following the review process of the Medical Standard Committee identified in Section 1 of this administrative regulation.

(1) Of current Kentucky-required training and procedures requiring physician medical direction that have been adopted by the board for statewide use, an EMT-B who is employed by an employer that has a contract or other agreement with a physician medical director shall, if approved by the appropriate physician medical director, be authorized to:

(a) Utilize an automated external defibrillator (AED) as referenced in the 1994 DOT EMT: Basic National Standard Curriculum, incorporated by reference in 202 KAR 7:050 and in accordance with the requirements of 202 KAR 7:120;

(b) Test the blood glucose level of a person using an automated testing device pursuant to laboratory licensing requirements established by the Department of Health and Human Services, Health Care Financing Administration, as identified in the board-approved curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician-Basic (EMT-B) in Blood Glucose Analysis", incorporated by reference in 202 KAR 7:060;

(c) Assist, if employed as a basic life support partner with advanced life support personnel for a board-licensed advanced life support provider, in the preparation of intravenous fluids for administration by an advanced life support person authorized to establish intravenous access in accordance with training in the board-approved supplemental curriculum "Kentucky Initial Training Curriculum for the Emergency Medical Technician-Basic (EMT-B) in the Monitoring of Preestablished Patient Intravenous Infusions", incorporated by reference in 202 KAR 7:060;

(d) Assist in the ventilation and care of a patient who has an endotracheal tube in place in accordance with training in the board-approved supplemental curriculum "Kentucky Emergency Medical Technician-Basic (EMT-B) Initial Training in Advanced Airway Management", incorporated by reference in 202 KAR 7:060;

(e) Utilize noninvasive patient monitoring devices in accordance with training in the board-approved supplemental curricula "Kentucky Emergency Medical Technician-Basic (EMT-B) Initial Training with Noninvasive Monitoring Devices, incorporated by reference in 202 KAR 7:060, to perform:

1. "Application of Electrocardiogram Electrodes and Monitor";
2. "Application of Pulse Oximetry"; and
3. "Application of End Tidal CO<sub>2</sub> Monitoring".

(f) According to training in the 1994 DOT EMT-Basic: NSC;

1. Administer patient prescribed epinephrine via use of an epinephrine auto-injecting device;

2. Administer patient prescribed nitroglycerin;

3. Administer activated charcoal;

4. Administer glucose containing substances via the oral route; and

5. Administer patient prescribed bronchodilators via the use of a metered dose inhaler.

(g) In accordance with training in the board-approved supplemental curriculum "Kentucky Emergency Medical Technician-Basic (EMT-B) Initial Training Curriculum in the Monitoring of Preestablished Patient Intravenous Infusions", incorporated by reference in 202 KAR 7:060, an EMT-B may:

1. Transport a discharged, stable patient who has a preestablished peripheral I.V. infusion from a health care facility to their residence. The I.V., infusion may be discontinued in accordance with the requirements of Section 1(2)(c) of this administrative regulation;

2. Provide interfacility transport for a stable patient who has a preestablished peripheral I.V. infusion and who does not otherwise require care by advanced level personnel. The preestablished I.V. infusion solution for interfacility transport shall be limited to contain:

- a. Ringers solution;
- b. Lactated ringers;
- c. Normal saline;
- d. Five (5) percent dextrose in water; or
- e. A combination of items identified in clauses (i) through (iv) of

this subparagraph, but without another additive.

(h) According to the following described conditions and limited to solutions identified in paragraph (g)2 of this subsection, an EMT-B may:

1. Change the flow rate of a preestablished I.V. infusion during a prehospital to medical facility or during an interfacility transport; or

2. Add additional infusion solution, identical to that of the preestablished I.V. infusion solution, during a prehospital to medical facility or interfacility transport; or

(2) An EMT-B may perform another procedure under authorization of a physician medical director for which the training curriculum and associated scope of practice by an EMT-B has undergone the Medical Standards Committee review process established in subsection (1) of this section and has been adopted by the board for use in a pilot program as established in Section 3 of this administrative regulation, or for statewide implementation.

Section 3. Pilot Programs. (1) The board shall authorize an EMS educational institution, Class I ground ambulance provider, Class III ground ambulance provider, or specialized Class I ground ambulance provider to pilot test and utilize a specialized training and associated procedure that has not been previously approved in this administrative regulation, if the EMS educational institution or ambulance provider:

(a) Submits a written request to the Medical Standards Committee for approval before initiating a pilot program;

(b) Provides a written description of:

1. How the procedure shall be implemented and monitored;

2. The proposed training curriculum;

3. A list of instructors and their qualifications;

4. The beginning and ending dates of the field pilot testing program;

5. How the procedure, if used by an EMT-B, shall benefit or improve the quality of patient care; and

6. The methods to be used to evaluate the training and the authorized procedure.

(c) The Medical Standards Committee may recommend to the board approval of the proposed pilot program; or may recommend revision to the request before further consideration; or may deny the request.

(2) An EMS educational institution, Class I ground ambulance provider, Class III ground ambulance provider, or specialized Class I ground ambulance provider approved by the board to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports as required by the board related to the progress of the pilot program; and

(b) To abide by the requirements established by the board for the pilot program.

(3) An EMT-B who successfully completes an approved pilot program may perform the procedures relevant to the training received in the pilot program.

(4) The board, at the recommendation of the Medical Standards Committee may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure related to:

1. Specific events;

2. Disasters; or

3. Directives; or

(c) The performance of an invasive or medication administered procedure related to:

1. Physician medical director oversight; or

2. Protocols established and supervised by the medical director of the ground ambulance provider.

(d) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedures an EMT may perform.

(b) The necessity of this administrative regulation: Identifies procedures an EMT may perform.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires the board to establish regulations for EMTs, including standards necessary for the protection of public health and safety in the delivery of emergency medical services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures an EMT may perform.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals receiving emergency medical services from EMTs and 10,671 EMTs.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies the particular procedures EMTs are authorized to undertake in consideration and reasonable standards for the protection of the public health and safety.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied because the procedures identified in the regulation are allowed to be performed by all certified EMTs.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

STATEMENT OF EMERGENCY  
202 KAR 7:090E

This emergency administrative regulation establishes grounds and procedures for taking disciplinary action against an applicant for certification or a certified EMT. It has been determined that an emergency exists because the authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:090 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:090E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)

202 KAR 7:090E. Disciplinary actions of emergency medical technicians.

RELATES TO: KRS 311.652 to 311.669, 311.990(21)  
STATUTORY AUTHORITY: KRS 311.6541, 311.6577  
EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 directs the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). This administrative regulation establishes grounds and procedures for taking disciplinary action against an applicant for certification or a certified EMT.

Section 1. Denial, Revocation, Suspension, Probation, and Restriction of Certificates. The board may reprimand publicly or privately or impose a fine upon a holder of an EMT certificate or, may deny, revoke, suspend, probate, or restrict the certificate of a person who:

- (1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- (2) Uses or has used drugs or controlled substances to the extent it affects the person's ability to perform the duties of an EMT, or becomes a drug dependent person or drug abuser;
- (3) Uses or has used alcohol to the extent that it affects the person's ability to perform the duties of an EMT or becomes an alcoholic person who suffers from alcoholism;
- (4) Has or develops a physical or mental disability or other condition that continued practice or performance of EMT duties is dangerous to patients or the public;
- (5) Failed or fails to:
  - (a) Follow the appropriate standards of care or established patient care protocols in the management of a patient;
  - (b) Administer medicine or treatment in a responsible manner in accordance with:
    1. The EMTs' level of certification;
    2. The legal order of a physician who is the medical director of the EMT;
    3. Locally approved medical protocols; or
    4. The legal order of a physician who is not the medical director of the EMT if the physician:
      - a. Is physically present with the patient;
      - b. Can be identified as a licensed physician in the United States of America;
      - c. Agrees to assume responsibility for the patient; and
      - d. Agrees to accompany the patient to the receiving medical facility;
  - (c) Meet the applicable requirements for certification or recertification pursuant to:
    1. 202 KAR 7:050 for an EMT-B;
    2. 202 KAR 7:092 for an EMT first responder or EMT first responder instructor; or
    3. 202 KAR 7:070 for an EMT-B instructor;
  - (6) Unlawfully breaches patient confidentiality;
  - (7) Reproduces or reconstructs, or attempts to reproduce or re-

construct, a portion of a training or certification examination for the purpose of assisting another to cheat on the examination; or

(8) Disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification examination in order to assist another to cheat on the examination;

(9) Cheats, or assists another to cheat, on an examination for certification;

(10) Does not meet the qualifications, minimum requirements, special requirements, and basic competency areas established in the:

(a) "Emergency Medical Technician Basic Functional Position Description"; or

(b) The "Emergency Medical Technician First Responder Functional Position Description";

(11) Issues a check for the payment of a fee for a certificate or is certified as a result of a check being presented on an invalid account or an account which does not have sufficient funds to pay the fee required by 202 KAR 7:030;

(12) Discriminates in the provision of services on the basis of race, sex, age, religion, color, creed, or national origin;

(13) Practices outside or beyond the scope of an EMTs level of certification, or represents qualification at a level other than current certification;

(14) Takes or possesses, without authorization, for personal use or gain, medicines, supplies, equipment, or personal items of a patient;

(15) Materially alters a certificate, or uses or possesses an altered certificate;

(16) Obtains or attempts to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge; or assists another to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge;

(17) Falsifies an application for certification or recertification;

(18) Falsifies a patient record;

(19) Has had an EMT, paramedic, or equivalent certificate or license denied, suspended, revoked, or restricted in another state while holding a Kentucky certificate;

(20) Uses or attempts to use the certificate to obtain or attempts to obtain a benefit to which the EMT is not entitled by duress, coercion, fraud, or misrepresentation;

(21) Is not at least eighteen (18) years of age when applying for certification;

(22) Has been convicted of a felony or misdemeanor described in KRS 335B.010(4); or

(23) Has pled no contest to a felony or misdemeanor described in KRS 335B.010(4); or

(24) Has been convicted of another relevant crime as established in Section 2 of this administrative regulation that is related directly to the ability of a person to perform the duties of an EMT.

Section 2. Relevant Crimes. In determining if a crime directly relates to the ability of a person to perform the duties of an EMT, the board shall apply the test established in KRS 335B.020(2) to the following crimes:

(1) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);

(2) Offenses under KRS Chapter 189A (driving under the influence); and

(3) Offenses under:

(a) KRS Chapter 218A (controlled substances);

(b) KRS Chapter 507 (criminal homicide);

(c) KRS Chapter 508 (assault and related offenses);

(d) KRS Chapter 509 (kidnaping and related offenses);

(e) KRS Chapter 510 (sexual offenses);

(f) KRS Chapter 511 (burglary and related offenses);

(g) KRS Chapter 512 (criminal damage to property);

(h) KRS Chapter 513 (arson and related offenses);

(i) KRS Chapter 514 (theft and related offenses);

(j) KRS Chapter 515 (robbery);

(k) KRS Chapter 521 (bribery and corrupt influences);

(l) KRS Chapter 523 (perjury and related offenses);

(m) KRS Chapter 525 (riot, disorderly conduct and related offenses);

(n) KRS Chapter 527 (offenses relating to firearms and weapons);

- (o) KRS Chapter 528 (gambling);
- (p) KRS Chapter 529 (prostitution offenses); and
- (q) KRS Chapter 506 (Inchoate offenses).

Section 3. Presumptive Denial of Certification for Conviction of a Relevant Crime. Convictions for the following crimes shall be grounds for presumptive denial or revocation of an EMT certification:

- (1) Capital offenses;
- (2) Class A, Class B, and Class C felonies;
- (3) Class D felonies, if the conviction occurred within the last five (5) years;
- (4) Crimes involving sexual misconduct including forcible rape;
- (5) Sexual or physical abuse of:
  - (a) Children;
  - (b) The elderly; or
  - (c) The infirm;
- (6) Child pornography;
- (7) Incest involving a minor;
- (8) Assault on an elderly or infirm person;
- (9) Crimes in which the victim is a patient or otherwise under the care and protection of the EMT or applicant including:
  - (a) Abuse;
  - (b) Theft; or
  - (c) Financial exploitation;
- (10) Crimes involving the use of alcohol or illegal drugs, while on duty as an EMT;
- (11) Crimes involving perjury or related offenses;
- (12) Traffic offenses defined as:
  - (a) A conviction for driving under the influence (DUI) within the last five (5) years; or
  - (b) More than two (2) separate moving violations incurred while operating an emergency vehicle; or
  - (13) Four (4) or more misdemeanor convictions within the last five (5) years.

Section 4. Restricted Certification for Conviction of a Relevant Crime. A person convicted of a relevant crime may be eligible for a restricted EMT certificate with a particular employer or a particular type of employment if:

- (1) The EMT has not been convicted of a Class D felony within five (5) years prior to the request for certification;
- (2) The EMT has not been convicted of another felony;
- (3) The EMT:
  - (a) Has completed the terms of the sentencing; or
  - (b) Is on unsupervised probation;
- (4) The crime does not fall under the conditions for presumptive denial or revocation established in Section 3 of this administrative regulation;
- (5) The EMT has not been convicted of traffic offenses defined as:
  - (a) Driving under the influence (DUI) within the last five (5) years; or
  - (b) A moving violation incurred while operating an emergency vehicle; or
- (6) The EMT has not been convicted of more than three (3) misdemeanors within the last five (5) years.

Section 5. Probationary Certification for Conviction of a Relevant Crime. A person convicted of a relevant crime may be eligible for a probationary EMT certificate if:

- (1) The crime does not fall under the conditions for presumptive denial or revocation established in Section 3 of this administrative regulation;
- (2) The crime does not meet the conditions for a restricted certificate established in Section 4 of this administrative regulation;
- (3) The EMT has not been convicted of traffic offenses defined as one (1) conviction for driving under the influence (DUI) within the last five (5) years; or
- (4) The EMT has not been convicted of more than two (2) misdemeanors within the last three (3) years.

Section 6. Persons Certified While Incarcerated. (1) The board may issue a restricted certificate to a person who is certified or obtains certification as an EMT-B, or EMT first responder while incarcerated in

a prison, correctional facility, reformatory, or jail to function as an EMT-B, or EMT first responder only within the scope of an ambulance service operated by that facility during the period of incarceration.

(2) If a restricted certificate is issued to a person who is incarcerated in a prison, correctional facility, reformatory, or jail, the certificate shall automatically expire upon release of the person from incarceration.

Section 7. Cease and Desist Order. If the board has reasonable cause to believe that a person may cause harm or create an imminent danger to the public if the certificate is not denied, suspended, revoked, probated or restricted, the board may issue an order directing a person to immediately cease and desist functioning as an EMT-B, EMT first responder, EMT first responder instructor, or EMT-B instructor.

Section 8. Notice Procedures. (1) The Board Quality Assurance and Ethics Committee shall notify a person by certified mail sent to the EMTs last known address of record of an action to deny, revoke, suspend, or restrict the EMTs certificate, and of the EMTs right to request a hearing.

(2) The written notice of the board shall comply with KRS 13B.050.

(3) Failure of an EMT to notify the board of a change of address or to accept or claim the certified notice at the EMTs last known address of record shall not:

- (a) Delay or negate the disciplinary action;
- (b) Change the effective date of the action; or
- (c) Suspend, alter, or negate the time period allowed to respond to the action or request a hearing.

(4) The written notice shall state the substance of each offense charged with sufficient detail to reasonably apprise him of the nature, time, and place of the violation.

Section 9. Hearings. (1) An administrative hearing shall be conducted in accordance with 202 KAR 7:150.

(2) The hearing shall be conducted by a hearing officer appointed by the board in accordance with 202 KAR 7:150.

(3) If an applicant or certificate holder does not request a hearing within twenty (20) days of the written notice of intended action, the action shall be final.

(4) If a person receives a certificate and the check for the certification fee is later returned unpaid due to an invalid account or insufficient funds, the certificate shall be automatically suspended until:

- (a) The fee is paid in full by cash, certified check, or money order; or
- (b) The person requests a hearing on the suspension.

Section 10. Disclosure and Publication of Disciplinary Actions. (1) The board may disclose to the public and publish in the EMS newsletter, or similar publication:

- (a) The name of a person who has been reprimanded publicly and/or fired; or whose certificate has been denied, suspended, revoked, or restricted and the time period involved;
- (b) The administrative regulation violated; and
- (c) The nature of the violation.

(2) If a person is employed as an EMT-B, EMT first responder, EMT first responder instructor, EMT instructor, or EMT instructor trainer at the time when a final decision is made by the board to reprimand publicly and/or fine the person or to deny, suspend, revoke, or restrict a certificate, the board shall notify the employer of record of the action taken.

(3) If a person fails to abide by a decision of the board to deny, suspend, revoke, or restrict the certificate, or to pay the fine imposed by the board; the person shall be in violation of KRS 311.6522 and may be charged with a Class A misdemeanor under KRS 311.990(21).

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

- (a) The "Emergency Medical Technician-Basic Functional Position Description", April, 1993; and
- (b) The "Emergency Medical Technician First Responder Func-



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tional Position Description", October, 1998.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establish grounds and procedures for disciplinary action against an applicant for certification or a certified EMT.

(b) The necessity of this administrative regulation: To identify grounds and procedures for disciplinary action for applicants for certification and certified EMTs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires the board to establish regulations for the issuance, renewal, suspension, denial, revocation, probation and restriction of certification, hearing of appeals and other reasonable standards as may be necessary for the protection of public health and safety in the delivery of emergency medical services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies the grounds and procedures for disciplinary action for applicants for certification and certified EMTs.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 10,671 EMTs.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It will identify grounds and procedures for disciplinary action for applicants for certification and certified EMTs.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applicable as all applicants for certification and certified EMTs are treated the same.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY 202 KAR 7:092E

This emergency administrative regulation establishes requirements for emergency medical technician first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:092 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:092E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

**202 KAR 7:092E. Emergency medical technician first responder training, examination, and certification.**

RELATES TO: KRS 311.652 to 311.669, 311.990(21)

STATUTORY AUTHORITY: KRS 311.6523, 311.6528, 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the board to promulgate administrative regulations relating to emergency medical technicians (EMTs). This administrative regulation establishes the requirements for emergency medical technician first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications.

Section 1. Training Course Requirements. (1) The emergency medical technician-first responder training course shall:

(a) Be conducted by a board-approved emergency medical services (EMS) educational institution that meets the requirements of 202 KAR 7:094;

(b) Not commence until the sponsoring agency has been certified by the board as an EMS educational institution;

(c) Be a minimum of forty-seven and one-half (47 1/2) hours in duration;

(d) Follow the U.S. Department of Transportation, (DOT), National Highway Traffic Safety Administration, 1995 EMT-First Responder National Standard Curriculum (1995 EMT-FR NSC); and

(e) Include training in:

1. Acquired immune deficiency syndrome (AIDS) as required by KRS 214.610 and 311.6531;

2. Proper use of automated external defibrillators (AEDs);

3. Proper use of oxygen therapy delivery devices including bag-valve-mask;

4. Proper use of a cervical collar and long spine board immobilization;

5. Proper use of the sphygmomanometer and stethoscope for obtaining blood pressure; and

6. Cardiopulmonary resuscitation (CPR) that meets the educational objectives of:

a. The American Heart Association;

b. The American National Red Cross; or

c. The National Safety Council.

(2) The CPR course shall:

(a) Be taught by a person who is:

1. An American Heart Association CPR instructor;



2. An American National Red Cross CPR instructor;
3. A National Safety Council CPR instructor;
4. An EMT-B instructor; or
5. An EMT-FR instructor; and
- (b) Include instruction and testing in:
  1. One (1) rescuer CPR;
  2. Two (2) rescuer CPR;
  3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of CPR;
  4. Techniques of changing rescuers during the performance of two (2) rescuer CPR;
  5. Techniques for relief of obstruction of the airway;
  6. CPR for infants and small children; and
  7. Barrier-to-mouth, barrier-to-nose and barrier-to-stoma resuscitation for adults, small children and infants.

Section 2. EMT First Responder Instructors. A person shall be eligible for certification as an EMT-FR instructor if the person:

- (1) Submits to the board:
  - (a) An application for EMT-FR instructor certification; and
  - (b) Payment the fee as required in 202 KAR 7:030;
- (2) Is a Kentucky-certified:
  - (a) EMT-FR trained in the 1995 EMT-FR NSC;
  - (b) EMT-B trained in the 1994 EMT-B National Standard Curriculum; or
  - (c) Paramedic trained in the 1994 EMT-B National Standard Curriculum.
- (3) Meets the requirements of Section 1(1)(d) of this administrative regulation;
- (4) Has completed a board-approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours that shall include:
  - (a) Adult learning techniques;
  - (b) Use of audio visuals;
  - (c) Small group dynamics; and
  - (d) Evaluation techniques.
- (5) Provides documentation of at least two (2) years experience teaching or providing emergency medical services;
- (6) Has completed instructor orientation on the 1995 EMT-FR NSC;
- (7) Has completed a board-approved HIV and AIDS Train the Trainer Course; and
- (8) Is not subject to disciplinary action pursuant to 202 KAR 7:090.

Section 3. Requirements for Applicants for Initial Kentucky EMT-FR Certification. An applicant for initial EMT-FR certification shall be eligible for certification if he:

- (1) Submits to the board a signed Kentucky Application for EMT First Responder Certification;
- (2) Provides evidence of current registration as an EMT-FR by the National Registry of Emergency Medical Technicians (NREMT);
- (3) Meets the Acquired Immune Deficiency Syndrome (AIDS) education requirements of 311.6531;
- (4) Pays the fees as required in 202 KAR 7:030; and
- (5) Is not subject to disciplinary action pursuant to 202 KAR 7:090.
- (6) A person applying for certification or recertification pursuant to 202 KAR 7:090, Section 6, shall not be required to hold current registration through the NREMT but shall provide evidence of a passing score on a written examination and practical skills examination required for NREMT registration.

Section 4. EMT First Responder Certification Examination. (1) The board shall prescribe the format and content of the EMT-FR certification examination, which shall include, the practical and written testing requirements of the NREMT-FR Examination Coordinators Manual.

- (2) A person shall not evaluate or proctor an EMT-FR certification examination if the person:
- (a) Served as lead instructor or assistant instructor for the student;
  - (b) Supervises or is supervised by the applicant for certification;
  - (c) Is a family member; or
  - (d) Has a conflict of interest that may potentially bias the evaluator or proctor toward or against the student in the performance of assigned duties.

(3) An EMT-FR student who does not become Kentucky-certified within two (2) years after the EMT-FR course completion date shall repeat the EMT-FR course before he/she may becoming certified.

- (4) The EMS educational institution or EMS testing agency shall:
- (a) Secure skill examination evaluators who shall meet requirements of 202 KAR 7:094, Section 4(3);
  - (b) Verify the eligibility of the student to test or initially retest for the Kentucky EMT-FR certification skills examination. Eligibility for subsequent testing or retesting shall be verified in conjunction with the Medical Standards Committee.

Section 5. Expiration of Certification. (1) An EMT first responder (EMT-FR) certificate shall expire no more than two (2) years from the date of issuance and shall be renewed no later than the last day of the EMT's birth month next preceding the two (2) year deadline. Thereafter, the certificate shall be renewed every two (2) years on or before the last day of the EMT's birth month.

(2) Upon expiration of the certification, an EMT-FR shall not perform a procedure authorized for a certified EMT-FR pursuant to Section 9 of this administrative regulation, unless is certified to do so under other credentials.

(3) If the certification of an EMT-FR expires, an EMT-FR certification may be obtained if the EMT-FR:

- (a) Successfully repeats the entire EMT-FR training course including the certification examinations; and
- (b) Meets the requirements of Section 3 of this administrative regulation.

Section 6. Renewal of EMT-FR Certification and Continuing Education Requirements. (1) Effective July 1, 2002, an EMT-FR who was initially certified by the board prior to the effective date of this administrative regulation, shall:

(a) Attain continuing education, taught by an EMT-FR instructor or a person who meets the requirements of 202 KAR 7:050, Section 4(2), prior to the expiration date of the certification that:

1. Meets or exceeds the requirements of the NREMT; and
2. Includes at least seventeen (17) contact hours, of which, two (2) shall be in AIDS education as required by KRS 311.6531.

(b) Provide written evidence to the board of completion of current training in CPR which meets the requirements of Section 1(1)(e)6 of this administrative regulation;

(c) Submit to the board, prior to the expiration date of the certificate:

1. A signed Application for EMT-FR Certification Renewal; and
2. A record of continuing education hours on a form that:
  - a. Has been signed by the instructor;
  - b. Has been signed by the EMT-FR; and
  - c. Contains a certification as to the truth of the information supplied.
3. Pays the fees as required in 202 KAR 7:030.

(2) An EMT-FR, who applies for renewal as an EMT-FR, who is initially certified by the board after the effective date of this administrative regulation, shall be eligible for Kentucky EMT-FR certification if the EMT-FR:

(a) Provides documentation that during the two (2) year certification period, the applicant completed a minimum of seventeen (17) contact hours of continuing education that includes:

1. Thirteen (13) hours equivalent to the U.S. Department of Transportation (DOT) Refresher Course;
2. Two (2) hours of continuing education that meets the AIDS education required by KRS 214.610;

(b) Provides documentation that prior to certification expiration date, the applicant met the requirements of certification renewal, including having obtained continuing education hours as required in subsection (1) of this section;

(c) Submits to the board, prior to the expiration date of the certificate:

1. A signed Application for EMT-FR Certification Renewal; and
2. A record of the continuing education hours earned by the applicant on a form which:
  - a. Has been signed by the instructor;
  - b. Has been signed by the EMT-FR; and
  - c. Contains a certification as to the truth of the information supplied.

plied;

(d) Provides written documentation from a CPR instructor, EMS educational institution instructor or chief administrative officer, or organization training officer verifying completion of the CPR requirements as outlined in Section 1(1)(e)6 of this administrative regulation;

(e) Is not subject to a disciplinary action identified in 202 KAR 7:090; and

(f) Pays the required fee established in 202 KAR 7:030, Section 1(3)(f).

(3) An EMT-FR shall submit a completed application for recertification postmarked on or before the expiration date of the certificate.

(4) If the application for renewal shall be postmarked to the board on or after the expiration date of the certificate, the applicant shall not be considered for renewal.

(5) An EMT-FR who is a member of the National Guard or a military reserve unit and who is called to active duty by Presidential Order under 10 USC 121 and 673b, shall, upon written request to the board, be given an extension for a period up to one (1) year after the release of the EMT-FR from active duty or return to the United States, whichever occurs first.

(6) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR transition course (TC) as described in Section 8 of this administrative regulation and does not successfully pass the accompanying practical skills examination may apply the hours earned in the EMT-FR TC hour-for-hour toward the required seventeen (17) continuing education hours described in subsection (1) of this section, except that the hours earned in the TC shall not:

(a) Apply toward the required two (2) hours of AIDS education required by KRS 214.610; or

(b) Apply as credit for update training to the 1995 EMT-FR NSC referenced in Section 1(1)(d) of this administrative regulation.

(7) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR TC and successfully passes the accompanying practical skills examination, may:

(a) Utilize the hours earned in the TC in accordance with the requirements of subsection (6) of this section; and

(b) Receive credit for completing the required update training to the 1995 EMT-FR NSC.

Section 7. Renewal of EMT-FR Instructor Certification. (1) Unless it is renewed, the certification of an EMT-FR instructor shall expire two (2) years from the date of issuance.

(2) An applicant for EMT-FR instructor renewal shall:

(a) Submit to the board a signed and completed application for EMT-FR instructor renewal;

(b) Provide documentation that continuing education has been obtained that meets the AIDS education required by KRS 311.6531;

(c) Provide documentation of current CPR instructor certification;

(d) Provide documentation of current EMT-basic or EMT first responder certification;

(e) Provide documentation of having provided a minimum of twelve (12) hours of active teaching of EMT first responders or EMT-FR candidates during the previous two (2) years;

(f) Provide documentation of at least twelve (12) hours of active involvement with the delivery of prehospital patient care or transportation services within an EMS system during the previous two (2) years; and

(g) Pays the fees as required in 202 KAR 7:030.

(3) A Kentucky-certified EMT-B instructor whose certification has not renewed, shall not:

(a) Teach an EMT-FR course;

(b) Teach an EMT-FR continuing education class;

(c) Serve as a lead instructor or assistant to the lead instructor; or

(d) Be eligible for renewal of the EMT-FR instructor certification.

(4) If the certification of an EMT-FR instructor expires, the requirement of Section 2 of this administrative regulation shall be met before the instructor may be eligible for certification.

Section 8. Kentucky EMT-FR Transition Course. (1) An EMT-FR currently certified in Kentucky who completed EMT-FR training based on a version other than the 1995 EMT-FR NSC shall, by December 31, 2002:

(a) Successfully complete the 1995 EMT-FR Transition Course

(TC) based on the first responder refresher, NSC medical and trauma skills examination within two (2) attempts; or

(b) If unsuccessful in completing the course identified in paragraph (a) of this subsection, attend a complete twenty (20) hour EMT-FR TC and pass the skills examination within two (2) attempts.

(2) A Kentucky certified EMT-FR who holds out-of-state certification shall not be required to take the Kentucky EMT-FR TC if documentation is provided of completion of equivalent training in another state prior to December 31, 2002.

(3) An EMT-FR, currently certified in Kentucky, who completed EMT-FR training in a Kentucky 1995 NSC EMT-FR Pilot Program or a 1995 NSC EMT-FR course shall not be required to complete the EMT-FR TC.

(4) An EMT-FR, currently certified in Kentucky, who completed EMT-FR training in a Kentucky 1995 NSC EMT-FR Pilot Program or a 1995 NSC EMT-FR course may complete the EMT-FR TC in order to obtain continuing education hours to meet the requirements of Section 6 of this administrative regulation for EMT-FR recertification.

(5) An EMT-FR TC shall be coordinated by an agency or organization approved by the board such as:

(a) An EMS educational institution;

(b) A licensed Class I ambulance service; or

(c) An acute care facility.

(6) An agency or organization sponsoring a 1995 NSC EMT-FR TC shall:

(a) File with the Medical Standards Committee a written notice of intent to sponsor an EMT-FR TC at least two (2) weeks prior to the planned starting date of the course;

(b) Assume the responsibility for conducting the EMT-FR TC;

(c) Ensure that the course is at least twenty (20) hours in duration.

This shall not include time for the course practical examination; and

(d) Utilize texts that shall:

1. Meet the requirements of the 1995 EMT-FR NSC;

2. Be currently in publication;

3. Be the most current edition available when the course begins;

4. Be maintained on file in the office of the sponsoring agency;

and

5. Be available upon request during normal office hours or during course hours.

(e) Have available supplies and equipment, if needed, during course lessons, skills practice sessions, and examinations;

(f) Not permit a student to be on call while classes are in session; and

(g) Provide a designated lead instructor for lectures who:

1. Is an EMT first responder instructor certified by the board; and

2. Has completed a Kentucky EMT-FR instructor orientation training program on the 1995 EMT-FR NSC.

(7) If there are more than ten (10) students enrolled in an EMT-FR TC, there shall be a minimum ratio of one (1) assistant instructor for each ten (10) enrolled students during skill practice sessions.

(8) An assistant instructor shall be available to assist as an evaluator for the course practical examination.

(9) An assistant instructor shall be Kentucky-certified or licensed as one (1) of the following:

(a) An EMT-B or EMT-FR instructor;

(b) A physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) A Kentucky certified paramedic who:

1. Holds current instructor credentials in the American Heart Association advanced cardiac life support or pediatric advanced life support; or

2. Is a Level 1 fire service instructor;

(d) A Kentucky licensed registered nurse who:

1. Has completed a EMT-FR TC; and

2. Is a certified emergency nurse; or

3. Has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

a. Holds current instructor credentials in the American Heart Association advanced cardiac life support or pediatric advanced life support; or

b. Is a Level 1 fire service instructor; or

(e) A Kentucky certified EMT-B or EMT-FR who:

1. Holds current instructor credentials as:

- a. An American Heart Association instructor;
- b. An American National Red Cross instructor; or
- c. A National Safety Council instructor; and
2. Holds current certification by:
  - a. The Commission on Fire Protection Personnel Standards and Education as a Level 1 or higher fire protection instructor; or
  - b. The Kentucky Law Enforcement Council as an instructor; or
  3. Has completed a board-approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours to include:
    - a. Adult learning techniques;
    - b. Use of audio visuals;
    - c. Small group dynamics; and
    - d. Evaluation techniques.
- (10) The sponsoring agency or organization shall:
  - (a) Submit to the Medical Standards Committee an application for approval to conduct an EMT-FR TC;
  - (b) Submit to the Medical Standards Committee the original copy of the:
    1. Results of the course skill station examination; and
    2. Master grade sheet;
  - (c) Maintain for a minimum of five (5) years or until December 31, 2006, whichever comes first, the original copy of the:
    1. Lesson attendance;
    2. Required remediation;
    3. Validation that a student has demonstrated competency in the eleven (11) psychomotor skill objectives which are required in order to take the accompanying course practical skills examination; and
    4. Master attendance sheet.
  - (d) Provide a certificate of completion which specifies:
    1. The hours earned toward certification renewal; and
    2. An indication if the student was successful in completing the EMT-FR TC by passing the accompanying skill examination.
  - (e) Assure that the accompanying course skill examination shall be administered with at least one (1) evaluator per station.
- (11) The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT-FR candidate randomly shall choose if the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT-FR candidate randomly shall choose a scenario which shall be tested.
- (12) At the completion of the skills examination, an EMT-FR TC student shall be informed of the pass-or-fail status.
- (13) If an EMT-FR TC student fails to pass the required stations, the student shall be permitted one (1) opportunity to retest the same station or stations failed, except that on the date of the retest, the student randomly shall choose the scenario for the station to be tested.
- (14) The retest may be administered by the same sponsoring agency or organization, that sponsored the EMT-FR TC in which the EMT-FR was enrolled, except that the evaluator shall not be the same evaluator who evaluated the EMT-FR during the first examination.
- (15) If an EMT-FR again fails to pass the required skill station examination, the student shall be required to retake the entire EMT-FR TC before being eligible for reexamination.
- (16) Until December 31, 2002, an EMT-FR may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.
- (17) An EMT-FR who has not been successful in passing the skill examination retest on the second attempt by December 31, 2002, shall not be eligible for Kentucky EMT-FR certification unless the entire EMT-FR course is retaken and successfully completed.

Section 9. Authorized Procedures. A Kentucky certified EMT-FR shall be authorized to:

- (1) Perform a procedure established in the U.S. DOT 1995 EMT-FR NSC Curriculum;
- (2) Possess and administer medical oxygen, including bag-valve mask;
- (3) Utilize an automated external defibrillator (AED) in accordance with KRS 311.665, et seq., for an EMT-FR;
- (4) Apply a cervical collar and perform long spine board immobilization; and
- (5) Utilize a sphygmomanometer and stethoscope for obtaining blood pressure.

Section 10. Reciprocity. A person shall be eligible for direct reciprocity for Kentucky certification as an EMT-FR if he meets the requirements of Section 3 of this administrative regulation.

Section 11. Exemptions from EMT-FR Administrative Regulations. The Kentucky certification requirements for an EMT-FR shall not apply to:

- (1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or
- (2) An EMT-FR who is certified in another state who comes into Kentucky:
  - (a) To transport a patient into or through the state; or
  - (b) For the purpose of returning a patient to:
    1. The parties' out-of-state residence; or
    2. To a medical facility in the parties' out-of-state residence.

Section 12. Conversion of EMT Certification to EMT-FR Certification. (1) If a Kentucky or out-of-state currently certified EMT-B requests to convert a certification status to EMT-FR, the person shall:

- (a) Submit a written request to the board to have the EMT-B certification converted to EMT-FR;
  - (b) Have completed successfully an EMT-B TC or EMT-FR TC; and
  - (c) Have completed successfully, within the past two (2) years, the continuing education requirements listed in Section 6(1)(a) of this administrative regulation.
- (2) If the certification of an EMT-B is converted to an EMT-FR, the EMT-FR shall not be allowed to convert back to EMT-B status, until the EMT-B certification requirements of 202 KAR 7:050, Section 1 are met.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The U.S. Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder-National Standard Curriculum;
- (b) The U.S. Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder-National Standard Curriculum Refresher Course;
- (c) The Kentucky EMT First Responder Curriculum Supplemental, 8/98;
- (d) The "Application for Emergency Medical Technician First Responder Certification" form (EMS Branch-FR-101), revised 02/98;
- (e) First Responder Official Record of Continuing Education In-service form (FR-102) (old curriculum), revised 09/96;
- (f) First Responder Official Record of Continuing Education In-service form (FR-102A), revised (new curriculum) 11/98;
- (g) FR-103 FR HIV AIDS Affidavit, 06/98;
- (h) FR-104 FR Implementing Agency Agreement, revised 06/98;
- (i) FR-105 The EMT First Responder Course Syllabus 6/98;
- (j) FR-107 FR Final Course Records Form, revised 03/98;
- (k) FR-108 FR Course Master Grade Sheet, revised 04/98;
- (l) FR-110 FR Certification Renewal Application, revised 02/98;
- (m) FR-112 FR Transition Course Syllabus, revised 04/98;
- (n) FR-113 FR TC Participant Competency Record, revised 04/98;
- (o) FR-114, FR Transition Course Application, revised 04/98;
- (p) FR-115 FR Transition Course Approved Document, revised 05/98;
- (q) FR-116 FR Transition Course Supplies and Equipment, revised 05/98;
- (r) FR-118 FR Transition Course Agency Application, revised 05/98;
- (s) FR-119 FR Implementing Agency Agreement, Renewal, revised 06/98;
- (t) FR 120 FR Certification Application Return Form, revised 05/98;
- (u) FR 121 FR Challenge Grade Form, revised 05/98;
- (v) FR 122 FR Challenge Attendance Sign-in Sheet, revised 06/98;
- (w) FR 124 FR Challenge Certification Application, revised 02/98; and

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(x) FR 125 Transition Course Master Grade Sheet.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moliney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for emergency-medical technician first responder (EMT-FR) and EMT-FR instructor training.

(b) The necessity of this administrative regulation: Identifies requirements for emergency-medical technician first responder (EMT-FR) and EMT-FR instructor training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires the board to promulgate regulation for the certification and classification of EMT's; the standards of training and experience for EMT's, instructors, instructor-trainers, students and trainees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Identifies requirements for emergency-medical technician first responder (EMT-FR) and EMT-FR instructor training.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,729 EMT-FR and EMT-FR instructors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Identifies requirements for emergency-medical technician first responder (EMT-FR) and EMT-FR instructor training.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied as all persons certified as EMT-FR and all EMT-FR instructors are treated the same.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY

202 KAR 7:094E

This emergency administrative regulation establishes requirements for an organization to be approved by the board as an emergency medical services (EMS) educational institution or an EMS testing agency. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:094 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:094E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:094E. Emergency medical services educational institutions and emergency medical services testing agencies.

RELATES TO: KRS 311.652 to 311.699, 311.990(21)

STATUTORY AUTHORITY: KRS 311.6523, 311.6524, 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for an organization to be approved by the board as an emergency medical services (EMS) educational institution or an EMS testing agency.

Section 1. EMS Educational Institution Requirements. (1) A public agency or private corporation that has been approved by the board to establish an EMS educational institution shall be authorized to conduct a training program that shall meet requirements for initial EMT certification.

(2) An applicant shall:

(a) File, with the Medical Standards Committee, a letter of request for approval to establish an EMS educational institution;

(b) Be located within Kentucky or a contiguous state;

(c) Submit to the board:

1. The estimated number of EMT courses planned for each academic year from July 1 until June 30 of the following year;

2. The tentative starting and ending dates of each course; and

3. A copy of the EMT syllabus for courses to be taught. The syllabus shall be resubmitted to the board if it is revised;

(d) Assign, in the following manner, a seven (7) digit number to each EMT course conducted:

1. The first three (3) digits shall correspond to the EMS educational institution approval number assigned by the board;

2. The fourth and fifth digits shall correspond to the academic year. For example, if a course is taught between July 1, 2000 through June 30, 2001, the academic year number assigned shall be zero one (01); and

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year.

(e) Employ or have available the following key administrative personnel and faculty:

1. A chief administrative officer who shall be responsible for the overall management of an EMS-educational institution or the organi-

zation of which the EMS educational institution is affiliated;

2. A program coordinator who shall:

a. Be responsible for the planning, administration and oversight of the EMS educational programs;

b. Randomly monitor the activities of the faculty and students during the didactic, skills and clinical or field rotation phases of the educational program;

c. Obtain and maintain records required by the educational institution or the board related to the conduct of prehospital caregiver courses; and

d. Serve as a member of the course faculty, if the coordinator holds credentials in accordance with subparagraphs 3 and 4 of this paragraph and subsections (3) and (4) of this section. A program coordinator who meets the requirements of subsection (4) of this section may also function as the lead instructor.

3. A lead instructor who shall:

a. If teaching an EMT-B instructor candidate U.S. Department of Transportation (DOT) EMT-B instructor method of instruction (MOI) educational course for a board-approved EMS educational institution, be a:

(i) Kentucky-certified EMT-B instructor who has been certified for at least three (3) years and who has taught at least two (2) complete EMT-B training courses;

(ii) Kentucky-appointed EMT instructor trainer; or

(iii) Person who holds a Kentucky current EMT-B or paramedic certification in addition to holding a bachelor's degree in education or a valid Kentucky (KY) teaching certificate.

b. If teaching an EMT-B course, be a Kentucky-certified EMT-B instructor; or

c. If teaching an EMT-first responder course, be a Kentucky-certified EMT-B instructor or EMT-first responder instructor.

4. An assistant instructor who shall be:

a. Minimally certified at the level for which the course is being conducted;

b. A certified EMT-B instructor for an EMT-B course;

c. A certified EMT-B instructor or an EMT-first responder instructor for an EMT-first responder course; or

d. An adjunct faculty member, who shall provide documentation to an EMS educational institution that he has actively lectured on or performed, within the most recent five (5) years, the skills or topic being taught; and

(f) Meet the requirements of the EMS educational institution Memorandum of Agreement.

(3) The lead instructor or an alternate instructor who meets the requirements of subsection (2)(e)4 of this section shall be present at each lecture and practical skills classroom session.

(4) A person who is certified at or above the level of the course being taught may serve as an assistant instructor during a practical skills lesson.

(5) There shall be present during a scheduled practical skills lesson:

(a) At least one (1) lead instructor for the first ten (10) students; and

(b) Another assistant instructor for each one (1) to ten (10) additional students.

(6) An EMS educational institution shall assure that physical resources as required by the curriculum, such as classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

(a) In good working condition; and

(b) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(7) An EMS educational institution shall develop and make available to a prospective student a clearly defined admission policy and procedure, which shall include specific requirements for admission such as:

(a) Academic requirements;

(b) Health-related requirements; and

(c) Admission prerequisites.

(8) An EMS educational institution shall disclose to an applicant for admission:

(a) Accurate information regarding program requirements;

(b) Tuition and fees including remediation fees or other costs associated with the training program;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skill practice schedules;

(f) Clinical or field rotation locations and tentative schedules;

(g) Board certification requirements for the level of training being offered; and

(h) The disciplinary actions described in 202 KAR 7:090 that may be grounds for actions against EMT, including but not limited to: reprimand, denial, revocation, suspension, probation, or restriction of EMT certification.

(9) An EMS educational institution shall establish and maintain written policies to ensure that:

(a) Announcements and advertising shall accurately reflect the courses offered;

(b) A procedure shall be in place that shall allow complaints and grievances to be processed that are filed by:

1. An applicant;

2. A student; or

3. A faculty member.

(c) There shall be a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;

(d) The health and safety of patients, students and faculty members shall be protected while participating in educational activities;

(e) A student or a faculty member shall maintain proper personal and professional conduct during classroom and clinical or field rotation activities;

(f) Continuing education requirements for faculty members shall be established and maintained;

(g) Passing requirements for each course offered shall be established and maintained; and

(h) Examination policies are established and maintained.

(10) A student, while participating in a clinical or field rotation shall be clearly identified by name and student status by the use of:

(a) A nameplate;

(b) A uniform; or

(c) Other apparent means.

(11) An EMS educational institution shall maintain, for at least five (5) years beyond the course completion date of the last classroom session of each EMT course:

(a) The student attendance for each course taught including:

1. Lectures;

2. Practical skill lessons; and

3. Clinical or field rotation;

(b) A master copy of written examinations and answer keys administered for each course taught;

(c) A master copy of practical skill examination forms used during each course taught;

(d) A master copy of the current course syllabus for the courses taught;

(e) Faculty records on a participating faculty member that shall include:

1. A complete resume; and

2. A listing of academic preparation, clinical experience, current certifications and licenses;

(f) Health records that may be required by an EMS educational institution or through a written clinical affiliation agreement;

(g) A record of disciplinary action taken against a student or a faculty member. This shall include all responses and actions taken as a result of a complaint or grievance;

(h) Remediation activity for each student enrolled. This shall include how the specific remediation was accomplished and if the process was successful; and

(i) A master file of the objectives and competencies achieved by a student. The file shall be reviewed annually by the EMS educational institution and updated as necessary.

(12) An EMS educational institution shall:

(a) Within two (2) weeks following the EMT course completion date, submit to the board a written summary report that includes the:

1. Name of the board-approved EMS educational institution;

2. Course number;

3. Name of the lead instructor and qualifications, including certification number and the lead instructor's certification expiration date

during the time the course was conducted, as well as names and similar qualifications of instructor assistants and adjunct faculty for the EMT course;

4. City in which the course is conducted;

5. Starting and ending dates, the ending date being the last classroom session which shall be a date prior to the date of the Kentucky Practical Skills Certification Examination date);

6. Listing of the names and Social Security numbers of enrolled students for the EMT course;

7. Identifier for the students referenced in subparagraph 6 of this paragraph who successfully passed the EMT training course requirements, with the provision of accompanying completed applications for Kentucky certification and required fees;

8. Identifier for the students referenced in subparagraph 6 of this paragraph who continued throughout the course but were unsuccessful in passing the EMT training course requirements, with an identifier for students yet attempting to finish clinical or field rotations; and

9. An identifier for the students referenced in subparagraph 6 of this paragraph who did not continue throughout and withdrew from the EMT course.

(b) Submit to the Quality Assurance and Ethics Committee by September 1 of each odd-numbered year a biennial written summary report covering the two (2) previous academic years' data from July 1 of the first year through June 30 of the second year. The biennial written report shall include the data regarding courses conducted within the two (2) previous academic years. A biennial report shall contain, for each course taught the:

1. Course number;

2. Name of the lead instructor;

3. Course location (city);

4. Starting and ending dates;

5. Number of students enrolled;

6. Number of students who successfully passed the EMT training course requirements;

7. Number of students who continued throughout the course but were unsuccessful in passing the EMT training course requirements; and

8. Number of students who did not continue throughout and dropped from the EMT course.

(13) If courses were not taught during the last reporting period an EMS educational institution shall file a biennial report with the via Medical Standards Committee stating that no courses were taught during the reporting period.

(14) Unless approval is revoked by the board pursuant to Section 3 of this administrative regulation, the approval of an EMS educational institution shall be valid for a period of five (5) years.

(15) At the end of a five (5) year approval period, an EMS educational institution may reapply for approval for an additional five (5) year period.

#### Section 2. Probation of an EMS Educational Institution Program.

(1) The board shall place an EMS educational institution program on probationary status if:

(a) During a twenty-four (24) month period, or after at least two (2) consecutive courses have been taught at the same level, more than twenty-five (25) percent of the course graduates who attempt to complete the certification examination process, fail to pass successfully the certification examination and associated certification process within twenty-four (24) months of the course completion date; or

(b) An inspection or investigation by the board determines that an EMS educational institution has not met the requirements of:

1. Section 1 of this administrative regulation; or

2. The EMS educational institution Memorandum of Agreement.

(2) If the board intends to place a program on probationary status, it shall notify the chief administrative officer of an EMS educational institution by certified mail.

(3) A program placed on probationary status shall not begin a new course within that same level of training during the term of the probationary period.

(4) Upon notification by the board that a program within an EMS educational institution has been placed on probationary status, the chief administrative officer shall conduct an evaluation of the programs

offered by the EMS educational institution. The evaluation shall include a review of:

(a) The qualifications, responsibilities, and performance of the program coordinator, medical director, lead instructor, and other course faculty;

(b) Student admission practices;

(c) Syllabi and objectives of courses offered;

(d) Graduation requirements for board-approved courses offered by the EMS educational institution;

(e) Faculty classroom involvement;

(f) Clinical or field rotation requirements and activities;

(g) Textbooks, equipment, supplies and ancillary learning aids used by the EMS educational institution during an approved course; and

(h) The ability of the EMS educational institution to meet the stated goals and objectives of the program.

(5) Within sixty (60) days of being placed on probationary status, the chief administrative officer shall provide a written report to the via Medical Standards Committee. The report shall include:

(a) Problems identified during the review process conducted pursuant to subsection (4) of this section; and

(b) A detailed plan for corrective action, including a time frame for the completion of the plan.

(6) After review of the written plan of correction, the or Medical Standards Committee may:

(a) Approve the entire plan;

(b) Approve a portion of the plan and require additional or alternative corrective action; or

(c) Disapprove the plan and restrict or revoke the approval of the EMS educational institution.

(7) Within sixty (60) days of receiving a written plan of correction, the Medical Standards Committee shall notify the chief administrative officer, by certified mail, of the planned action of the or Medical Standards Committee.

(8) The Medical Standards Committee shall monitor compliance and may conduct an investigation to determine if a requirement established for corrective action has been met.

Section 3. Denial, Revocation, Suspension, and Restriction of Approval of an EMS Educational Institution. (1) The board may deny, revoke, suspend, or restrict the approval of an EMS educational institution if an EMS educational institution:

(a) Is on probationary status and fails to meet the corrective action required by the Quality Assurance and Ethics Committee.

(b) Faculty member or staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of a training or certification examination for the purpose of assisting another to cheat on the examination;

(c) Faculty member or staff member disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification examination in order to assist another to cheat on the examination;

(d) Faculty member or staff member cheats, or assists another to cheat, on an examination for training or certification;

(e) Falsifies a record of training or continuing education;

(f) Fails to pay a fee or issues a check for a fee required by 202 KAR 7:030 on an invalid account or an account that does not have sufficient funds;

(g) Fails to file a written biennial report as required by Section 1(12)(c) or (13) of this administrative regulation; or

(h) Fails to meet the requirements of the EMS educational institution Memorandum of Agreement.

(2) If the approval of an EMS educational institution is denied, restricted, suspended or revoked by the board, the EMS educational institution shall be provided an opportunity to appeal the decision in accordance with the provisions of 202 KAR 7:150.

Section 4. EMS Testing Agencies. (1) An EMS educational institution, public agency, or private corporation may be approved to administer the practical skills and written certification examinations if it:

(a) Files, with the board, a letter of request for approval to establish an EMS testing agency;

(b) Meets the requirements of the EMS testing agency Memorandum of Agreement.

dum of Agreement.

(2) A person shall not be proctor for the written portion nor function as an examiner or an examination representative for the practical skills portion of a Kentucky EMT certification examination for an EMT candidate if the person:

(a) Served as a key administrative personnel of an EMT-Basic course for which candidates are being tested as described in Section 1(2)(e) of this administrative regulation;

(b) Supervises or is supervised by the candidate;

(c) Is a family member of the candidate; or

(d) Has a conflict of interest that may potentially bias the examiner or examination representative of the practical skills portion or the proctor of the written portion of the Kentucky EMT certification examination toward or against the candidate.

(3) The EMS testing agency shall:

(a) Be responsible for securing examiners for the practical skill portion of the Kentucky EMT certification examination who shall:

1. Be currently certified or licensed to perform the skills at or above the level of training of the candidate being tested;

2. Document that they have had a minimum of two (2) years pre-hospital patient care experience prior to serving as an examiner; and

3. Have completed a board-approved practical skills examiner training program conducted by the board or personnel of a board-approved testing agency;

(b) Verify the eligibility of a candidate applying to initially test or retest for the Kentucky EMT-B practical skills or written portion of the Kentucky EMT certification examination. Eligibility for testing or retesting shall follow the guidelines of the:

1. "1994 National Registry of EMT-Basic Practical Examination Users Guide" for EMT-Basics, incorporated by reference in 202 KAR 7:050;

2. "1995 National Registry of EMT First Responder Practical Examination Users Guide" for EMT First Responders, incorporated by reference in 202 KAR 7:092;

3. "1994 National Registry EMT-Basic, Examination Coordinator Manual", incorporated by reference in 202 KAR 7:050;

4. "1995 EMT First Responder, Examination Coordinator Manual", incorporated by reference in 202 KAR 7:092; and

5. Board requirements of the board pursuant to subparagraphs 1 through 4 of this paragraph; and

(c) Be responsible for securing proctors for the written portion of the Kentucky EMT certification examination who shall comply with the requirements of subsection (2) of this section and who shall not be an EMT training program coordinator or an EMT instructor as established in Section 1(2)(e)2 and 3 of this administrative regulation.

(4) The approval of an EMS testing agency may be probated, denied, revoked, suspended, or restricted if an agency faculty member or representative is found to have committed an offense described in Section 3(1)(b), (c), (d), (e), (f) or (h) of this administrative regulation.

(5) The approval of an EMS testing agency may be probated, denied, revoked, suspended or restricted if an agency proctor, examiner, or other representative is found to have violated a testing guideline established in subsection (3)(b) of this section.

(6) If the approval of an EMS testing agency is denied, restricted, suspended or revoked by the board, the EMS testing agency shall be provided an opportunity to appeal the decision in accordance with the provisions of 202 KAR 7:150.

Section 5. Public Notice of Negative Action. The board shall publish, in the EMS Newsletter, similar publication of the board, or otherwise disseminate the name of an EMS educational institution or EMS testing agency that:

(1) Is placed on probationary status;

(2) Is placed on restrictive status;

(3) Is suspended; or

(4) Has had approval as an EMS educational institution or EMS testing agency revoked.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) EMS Educational Institution Memorandum of Agreement (EMS Branch 7/99); and

(b) EMS testing agency Memorandum of Agreement (EMS

Branch 6/99).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for an organization to be approved as an emergency medical services (EMS) education institution or an EMS testing agency.

(b) The necessity of this administrative regulation: Identifies requirements for an organization to be approved as an emergency medical services (EMS) education institution or an EMS testing agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6541 requires the board to promulgate regulations for examinations, standards of training, experience and curricular standards of EMT's.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies the requirements for an organization to be approved as an emergency medical services (EMS) education institution or an EMS testing agency.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 287 EMS education institution and testing agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It will identify the requirements for an organization to be approved as an emergency medical services (EMS) education institution or an EMS testing agency.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applied as all EMS education institutions and EMS testing agencies are treated the same.

## 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this



administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

# STATEMENT OF EMERGENCY 202 KAR 7:100E

This emergency administrative regulation establishes requirements for rules of practice and procedure for the board, committees of the board and subcommittees of the board. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:100 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:100E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

## KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

**202 KAR 7:100E. Rules of practice and procedure for the board, committees of the board and subcommittees of the board.**

RELATES TO: KRS 311.6523

STATUTORY AUTHORITY: KRS 311.6523

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the board to promulgate administrative regulations relating to rules of practice and procedures for the board, committees of the board and subcommittees of the board.

Section 1. Quorum, Voting. (1) In order for the board to take action, other than adjourn, or adjourn to a time certain, a quorum shall be present.

(2) In order to transact routine business, terminate the employment of a person in a statutory position, or take action on a proposed discipline or a consent decree, a quorum is ten (10) members of the board.

(3) In order to transact the following business, a quorum is twelve (12) members of the board.

(a) Promulgate, amend, or repeal an administrative regulation;

(b) Employment, directly, or by personal service contract, of the executive director, general counsel, or medical advisor;

(c) Initiating legal action on behalf of the board;

(d) Hiring outside legal counsel to defend the board in a legal action against the board, a member of the board, or an employee of the board, or for other specified purpose;

(e) Adopting a budget or proposed budget for the board;

(f) Authorizing the expenditure of more than \$5,000 unless the amount is a routine budgeted expenditure;

(g) Taking action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board;

(h) Taking action at an emergency meeting of the board.

(4) The total membership of the board is to be taken as the basis for computing a quorum of the board and is determined by the number of members present.

(5) When the board has convened with a quorum present, it can continue to transact business so long as a quorum is present and it is presumed that the quorum continues to be present until the question of no quorum is raised or the lack of a quorum is disclosed by a vote.

(6) Where a roll call shows that there was a quorum for the trans-

action of business, but the roll call on a particular proposition shows that less than a quorum voted, it shall not be presumed that a quorum was not present at the time the vote was taken.

(7) When it is observed that a quorum is not present, any member of the board may call for the board to be counted and, if found deficient, business shall be suspended.

(8) The suggestion of no quorum is a question of order and in order at any time. A question of no quorum may interrupt a speech.

(9) When a member of the board desires to call attention to the fact that no quorum is present, that person shall arise and address the presiding officer and note the absence of a quorum. The presiding officer may then count the members or may assume the responsibility of declaring a quorum present, or not present, without a count.

(10) No question may be decided and no official action taken in the absence of a quorum, except to order a call of the members or to adjourn.

(11) An action requiring quorum which is taken after the absence of a quorum has been ascertained shall be null and void.

Section 2. Physical Presence, Exception. A member of the board shall be physically present at the meeting in order to be counted for a quorum, take part in debate, or to vote, unless the meeting is a lawful video teleconference held in conformity to the provisions of KRS 61.805 to 61.850.

Section 3. Proxy Member, Proxy Statement, Proxy Voting. (1) No person shall be permitted to act as a proxy, or alternate, for a board member.

(2) No board member shall submit, and the board shall not accept, any written, oral, pictorial, electronic, or other document or media on any matter or at any time when the physical presence of the board member is required.

Section 4. Vote Required for Board Action. (1) In order for the board to take action on any routine matter, including, but not limited to, termination of a statutory employee or on an agreed order for discipline or consent decree, nine (9) members of the board shall have agreed to the action.

(2) In order for the board to take action on the following matters, eleven (11) members of the board shall have agreed to the action.

(a) Promulgate, amend, or repeal an administrative regulation;

(b) Employment, directly, or by personal service contract, of the executive director, general counsel, or medical advisor;

(c) Initiating a legal action on behalf of the board;

(d) Hiring outside legal counsel to defend the board in a legal action against the board, a member of the board, or an employee of the board, or for other specified purpose;

(e) Adopting a budget or proposed budget for the board;

(f) Authorizing the expenditure of more than \$5,000, unless the amount is a routine budgeted expenditure;

(g) Taking action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(h) Taking an action at an emergency meeting of the board.

(3) Each vote taken by the board shall be a roll call vote.

Section 5. Preparation of the Agenda for a Regular Board Meeting. (1) Any person desiring a matter to be placed on the agenda for a regular board meeting shall, not less than fourteen (14) days prior to the board meeting, submit to the executive director in writing a request for a matter to be placed on the agenda for the upcoming board meeting.

(2) The request shall contain the following information:

(a) What matter is to be placed before the board;

(b) What action is desired on the matter;

(c) Documentation in support of the request;

(d) The name, address, telephone number, or other contact method for each person requesting to speak on behalf of the request at the board meeting; and

(e) The name, address, telephone number, or other contact method for the person or organization submitting the request.

(3) The executive director shall transmit each request with the accompanying material to the chairman of the board not more than one



(1) working day after its receipt by the executive director.

(4) Not less than seventy-two (72) hours prior to the board meeting, the chairman of the board shall set the agenda and cause its publication on the Internet and in writing. Written copies of the agenda may be obtained from the executive director after its publication. The board may charge a reasonable fee for the provision of an agenda by mail, telefax, e-mail, or in hard copy. Following its publication, the agenda shall be available for inspection at the offices of the board.

(5) The submission of a request for a matter to be placed on the agenda at a regular board meeting shall not guarantee that the matter will be placed on the agenda, or the sequential order of any matter approved for the agenda on the agenda.

#### Section 6. Adherence to the Agenda at a Regular Board Meeting.

(1) The board shall adhere to the published agenda at a regular board meeting, except as provided herein:

(a) The chairman of the board may call any agenda item for discussion regardless of its sequential order on the agenda;

(b) A member of the board may move that any agenda item be called for discussion regardless of its sequential order on the agenda, subject to an affirmative vote of the board;

(c) A member of the board may move that an item on the agenda be passed over, subject to an affirmative vote of the board;

(d) A member of the board may move that an item on the agenda be stricken from the agenda, subject to an affirmative vote of the board and the voting requirements of Section 4 of this administrative regulation.

(2) A member of the board may move that an item not on the agenda, be added to the agenda and considered by the board, subject to an affirmative vote of the board. The addition of an item to the agenda shall be subject to the voting requirements of Section 4 of this administrative regulation.

(3) If an item is added to the agenda by action of the board, no action other than referral to a committee, shall be taken by the board at the meeting at which the item is added to the agenda unless by an affirmative vote of the board subject to the voting requirements of Section 4 of this administrative regulation.

#### Section 7. Public Comment on Agenda Item at a Board Meeting.

(1) The chairman of the board may permit the person who has submitted an item on the agenda at a board meeting to speak on behalf of that item. The chairman may permit additional persons to speak for or against any item on the agenda at a board meeting and may limit the number of persons who may speak for or against any item on the agenda.

(2) The chairman of the board shall limit the time the person who has submitted an item on the agenda at a board meeting and shall limit both the individual and total time of any person speaking for or against any item on the agenda.

(3) The chairman of the board is under no obligation except as provided under subsection (4) of this section, to permit any person, other than a member of the board, to speak at a board meeting and may prohibit or limit any person who is not a member of the board from speaking or addressing the board at a board meeting.

(4) A member of the board may move that a speaker on an agenda item at a board meeting be granted a specific amount of additional time to speak for or against an agenda item, subject to an affirmative vote of the board and the voting requirements of Section 4 of this administrative regulation.

#### Section 8. Attendance of Board Staff and Employees at a Board Meeting.

(1) The following staff of the board shall attend each board meeting, unless excused in writing by the chairman of the board or excused from the meeting by action of the board:

- (a) The executive director;
- (b) The general counsel; and
- (c) The medical supervisor.

(2) An employee of the board, other than one specified in subsection (1) of this section shall attend a meeting of the board when requested to do so by the chairman of the board or the executive director.

(3) Unless given permission in writing by the executive director, an employee of the board shall not attend a meeting of the board on state

duty time.

Section 9. Relationship of a Committee or Subcommittee to the Board. (1) The board is the dominant body and the board may assign a matter to a committee or subcommittee, move a matter from one committee or subcommittee to another, or withdraw a matter from consideration by a committee or subcommittee.

(2) A subcommittee shall report to a committee and not to the board.

(3) A committee shall report to the board.

(4) No committee shall transfer a matter to another committee, a committee shall recommend transfer of a matter to another committee to the board.

(5) No subcommittee shall transfer a matter to another subcommittee or to committee other than the committee to which it is a subcommittee. The subcommittee may recommend to its parent committee that a matter be transferred elsewhere in accordance with the provisions of this section.

(6) When a subcommittee makes a report or recommendation to its parent committee, that report or recommendation shall be in writing and shall be presented to the parent committee by the chairperson of the subcommittee unless the chairperson of the subcommittee permits another member of the subcommittee to present the report or recommendation.

(7) When a committee makes a report or recommendation to the board, that report or recommendation shall be in writing and shall be presented to the board unless the chairman of the board, or the board by affirmative vote, permits another member of the committee to present the report or recommendation.

(8) When a subcommittee makes a report or recommendation to a committee the committee may:

- (a) Accept the report or recommendation;
- (b) Modify the report or recommendation;
- (c) Not accept the report or recommendation;

(d) Send the report or recommendation back to the subcommittee for action specified by the committee;

(e) Recommend to the board that the matter be referred to another committee; or

(f) Take no other action with regard to the report or recommendation.

(9) When a committee makes a report or recommendation to the board the board may:

- (a) Accept the report or recommendation;
- (b) Modify the report or recommendation;
- (c) Not accept the report or recommendation;

(d) Send the report or recommendation back to the committee for action specified by the board;

(e) Send the report or recommendation to another committee for action specified by the board; or

(f) Take no other action with regard to the report or recommendation.

Section 10. Procedure in Committee or Subcommittee. (1) Procedure in a committee shall be the same as the procedure specified for the board unless the chairman of the board permits a deviation from the procedure in writing, or the board permits a deviation from the procedure by action of the board. Voting in a committee shall be done by roll call vote.

(2) Procedure in a subcommittee shall be the same procedure specified for the board unless:

(a) The chairman of the board permits a deviation from the procedure in writing;

(b) The board permits a deviation from the procedure by action of the board;

(c) The matter is related to the placing of an item on the agenda for the subcommittee; or

(d) The matter is related to receiving public comment on an item before the subcommittee.

(3) Procedure in a subcommittee relating to an item specified in subsection (2) of this section shall be at the discretion of the chairman of the subcommittee or the subcommittee by action upon a motion. Voting in a subcommittee shall be conducted by roll call vote.

(4) Each committee or subcommittee shall produce written min-

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utes describing the official actions of the body in accordance with the requirements of KRS 61.870 to 61.884.

Section 11. Right of Appeal from the Action of a Subcommittee or Committee. (1) A person aggrieved by an action of a subcommittee may appeal to the parent committee of the subcommittee as a matter of right.

(2) A person aggrieved by an action of a committee may appeal to the board as a matter of right.

(3) Any other appeal shall be a discretionary appeal, with the discretion for allowing or denying the appeal being that of the board. The board may allow or deny a discretionary appeal by an affirmative vote of the board subject to the provisions of Section 4 of this administrative regulation.

Section 12. Manner of Filing an Appeal. (1) An appeal shall be in writing, made by the aggrieved party, signed by the aggrieved party who is the appellant, and shall be filed with the executive director of the board.

(2) An appeal shall be filed not later than:

(a) Ten (10) days following the date of the decision, if the appealing party was present at the meeting at which the decision was made; or

(b) Ten (10) days following the date of the mailing of the decision as evidenced by a proof of mailing the document from the United States Postal Service, if the appealing party was not present at the meeting at which the decision was made or if it is not known whether or not the appealing party was present at the meeting at which the decision was made.

(3) The appeal shall specify:

(a) The body generating the decision appealed from;

(b) The specific action or decision appealed from;

(c) The nature of the issue and the grounds for the appeal;

(d) Documentation supporting the appeal;

(e) The appellant's title or position, if representing other than a natural person;

(f) The name, address, telephone number, or other means of contacting appellant;

(g) The name, address, telephone number, or other means of contacting legal counsel representing the appellant;

(h) A statement that the appellant requested the decision appealed from, was a party to the decision appealed from, or has other specified legal standing to file an appeal of the decision appealed from; and

(i) A sworn statement that the facts and information contained in the appeal are true and correct to the appellant's best knowledge.

(4) Upon the receipt of an appeal by the executive director, the executive director shall cause the appeal to be placed on the agenda of the next regular meeting of the committee, or of the board, as appropriate, unless the appeal is placed on the agenda for an intervening special or emergency meeting of the committee or the board, as appropriate.

Section 13. De Novo Appeal. No appeal shall be considered de novo unless the record is insufficient to permit reasonable consideration of the appeal.

Section 14. Consideration of an Appeal. (1) The board or a committee of the board may make a decision on appeal based upon the record and upon briefs submitted to it.

(2) The board or a committee of the board may grant an oral argument on an appeal.

(3) The rules for the hearing and consideration of an appeal shall be those set forth in KRS Chapter 13B or the Rules of Civil Procedure, whichever is applicable.

Section 15. Decision on Appeal. (1) The board or a committee of the board may take the following actions with regard to an appeal which has been filed with it.

(a) Dismiss the appeal;

(b) Grant the appeal;

(c) Make any appropriate decision with regard to the appeal;

(d) Refer the appeal to a committee or subcommittee of the board,

as appropriate, with directions to take specified action.

(2) A decision of the board or a committee of the board relating to an appeal shall be made in writing, shall contain findings of fact, conclusions, and recommendations, as appropriate. A decision of the board or a committee of the board shall be a public record.

Section 16. Legal Representation. (1) Any person appearing before the board, a committee, or subcommittee, filing an appeal, or being disciplined by the board may be represented by legal counsel of choice, who is licensed to practice law in Kentucky.

(2) Counsel shall notify the executive director at least forty-eight (48) hours prior to making an appearance before the board, a hearing panel, a committee or subcommittee of the board of the client representation and the matter for which representation is sought.

(3) During any appeal or any other matter, the board may be represented by its legal counsel, by the Attorney General, or by retained legal counsel licensed to practice law in Kentucky.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes rules of practice and procedure for the board, committees of the board and subcommittees of the board.

(b) The necessity of this administrative regulation: to conform with requirements of KRS 311.6523(7)(g).

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires the establishment of committees and subcommittees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes rules of practice and procedure for the board, committees and subcommittees of the board.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes rules of practice and procedure for the board, committees and subcommittees of the board.

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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

**STATEMENT OF EMERGENCY  
202 KAR 7:102E**

This emergency administrative regulation establishes requirements for committees and subcommittees of the board. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:102 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:102E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)**

**202 KAR 7:102E. Committees and subcommittees of the board.**

RELATES TO: KRS 311.6523

STATUTORY AUTHORITY: KRS 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6523 permits the board to have rules of procedure and to create committees and subcommittees. KRS 311.6524 requires that these matters be done through the promulgation of administrative regulations. This administrative regulation implements those statutes with regard to committees and subcommittees of the board.

Section 1. Appointment of Committee Members and Committee Chairpersons. (1) Committee members and committee chairpersons shall be appointed by the chairman of the board, shall serve at the pleasure of the chairman of the board but shall not serve longer than one (1) year without reappointment. Members of a temporary committee shall serve at the pleasure of the chairman of the board but that term shall end upon the close of work of the temporary committee, and in no case shall a member of a temporary committee serve for longer than one (1) year without reappointment. All appointments to committees, subcommittees or temporary committees shall expire June 30. Reappointment for a subsequent term may be made by the chairperson of the board anytime after May 1 or before June 30.

(2) A committee chairperson shall be a member of the board.

(3) Only a committee may bring reports or recommendations before the full board for official action. Only the chairperson of a committee, or the chairperson's appointed representative may present a report to the board.

(4) Subcommittee members and subcommittee chairpersons shall be appointed by the chairman of the board, shall serve at the pleasure of the chairman of the board. Members of a temporary subcommittee shall serve at the pleasure of the chairman of the board but that term shall end upon the close of the work of the temporary subcommittee.

(5) A subcommittee chairperson shall be a member of the board.

Section 2. Appointment of Subcommittees. (1) A subcommittee may be appointed by the chairman of the board for the limited purpose of providing advice to a committee on a specific issue.

(2) When the subcommittee is appointed, it shall be given a specific written task by the chairman of the board together with appropriate instructions for guidance

Section 3. Consideration of Matters by Committees and Subcommittees. A committee or subcommittee shall consider only the topics assigned to the committee or subcommittee by statute, administrative regulation, or direction of the board, unless otherwise authorized by action of the board.

Section 4. Administrative Regulations Committee. (1) The administrative regulations committee shall recommend to the board promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to:

- (a) Emergency medical technician-first responders;
- (b) Emergency medical technicians;
- (c) Paramedics;
- (d) Ground ambulances;
- (e) Air ambulances; or
- (f) Such other topics as may be appropriate or as assigned by the board.

(2) The administrative regulations committee shall have the following subcommittees:

- (a) Emergency medical technician-first responder; which subcommittee shall consider and recommend to the Administrative Regulations Committee, administrative regulations of the governance of emergency medical technicians-first responder activities;
- (b) Basic life support; which subcommittee shall consider and recommend to the Administrative Regulations Committee, administrative regulations of the governance of emergency medical technicians;
- (c) Advanced life support; which subcommittee shall consider and recommend to the Administrative Regulations Committee, administrative regulations of the governance of paramedic activities;
- (d) Ground ambulance; which subcommittee shall consider and recommend to the Administrative Regulations Committee, administrative regulations of the governance of ground ambulance activities;
- (e) Air ambulance; which subcommittee shall consider and recommend to the Administrative Regulation Committee, administrative regulations of the governance of air ambulance activities; and
- (f) Rules and procedures; which subcommittee shall consider and recommend to the Administrative Regulation Committee rules and operating procedures for the board and each of its committees and subcommittees.

Section 5. Medical Standards and Practice Committee. (1) The medical standards and practice committee shall recommend to the board, after appropriate review and approval by the Administrative Regulations Committee for form and content, promulgation of administrative regulations, amendment of administrative regulations, and repeal of administrative regulations relating to:

- (a) Scope of practice of persons and organizations licensed, certified, or regulated by the board;
  - (b) All aspects of training and education of persons and organizations licensed, certified, or regulated by the board;
  - (c) Educational institutions and other providers of training and education of persons or other organizations licensed, certified, or regulated by the board; and
  - (d) Such other matters as may be assigned by the board.
- (2) The medical standard and practice committee shall also make recommendations to the board concerning:
- (a) Applications for initial, in-service, review, update, continuing education, or other training and education of persons licensed, certified, or regulated by the board;
  - (b) Approval of educational institutions, and providers of initial, in-service, review, update, continuing education, or other training and education of persons or organizations licensed, certified, or regulated by the board;
- (3) The medical standards and practice committee shall have the

following subcommittees:

(a) Scope of practice, BLS, which subcommittee shall study and make recommendations concerning the scope and practices of EMT-first responders and EMTs, including protocols statewide;

(b) Scope of practice, ALS, which subcommittee shall study and make recommendations concerning the scope and practices of paramedics, including protocols statewide;

(c) Curriculum/standards; which subcommittee shall consider all requests for training programs for EMT-first responder, EMT and paramedic courses. It shall serve as the liaison with the National Registry of EMT; shall monitor the results of all emergency medical services course conducted in Kentucky, investigate complaints against training programs and develop course curriculum recommendations.

(d) Basic life support education; which subcommittee shall study and make recommendations to the Medical Standards Committee to develop and enhance basic life support training in Kentucky. It shall be responsible for compliance with national standard in training, testing and continuing education for BLS provider certification and recertification.

(e) Advanced life support education; which subcommittee shall study and make recommendations to the Medical Standards Committee to develop and enhance paramedic training in Kentucky. It shall also make recommendations for qualification of paramedic course instructors and continuing education programs; and

(f) EMS-C; which subcommittee shall study and make recommendations to the Medical Standards Committee to develop and provide oversight for EMS children's programs.

Section 6. Budget and Funding Committee. (1) The budget and funding committee shall recommend to the board, after appropriate review and approval by the Administrative Regulation Committee for format and content, promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to emergency medical services funding programs and funding of the emergency medical services for children program;

(2) The Budget and Funding Committee shall:

(a) Review applications and make recommendations to the board regarding requests for funding under emergency medical services funding programs and the emergency medical services for children program;

(b) Recommend to the board funding programs, including state and federal grants; for local emergency medical services providers;

(c) Create and recommend to the board a biennial budget for the board and recommend to the board means of funding and its programs;

(d) Monitor, and review the accountability and encouragement of reimbursement programs for emergency medical services providers;

(e) Monitoring and review grants received or managed by the board; and

(f) Such other matters as may be assigned to the committee by the board.

(3) The budget and funding committee shall have the following subcommittees:

(a) Budget; which shall monitor the final status of the budget and make recommendations to the Budget and Funding Committee for fees to be charged by the board, salaries of personnel, committee expenses and distribution of any grant monies of the board;

(b) Emergency medical services and emergency medical services for children funding allocation; which shall review and approve operational disbursements over \$1,000 and all capital disbursements; ensure annual audits are conducted; and recommend approval of a proposed budget to the board; and

(c) Emergency medical services reimbursement, which shall serve as a liaison with state and federal entities concerning reimbursement for ambulances and emergency medical services providers.

Section 7. Quality Assurance and Ethics Committee. (1) The Quality Assurance and Ethics Committee shall investigate fully all complaints received by the board and present to board its findings of all investigations, whether conducted informally or formally.

(2) Formal investigations shall include hearing procedures as required by KRS 311.6577 and conducted pursuant to KRS Chapter 13B of the Kentucky Revised Statutes. The investigation of complaints

may include the services of field investigations, lawyers or the exercise of the authority of an appropriate court.

(3) Investigative reports to the board shall include findings of fact, conclusions and recommendations for sanctions.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes committees and subcommittees of KBEMS.

(b) The necessity of this administrative regulation: to conform with requirements of KRS 311.6523(7)(g).

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires the establishment of committees and subcommittees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the committees and subcommittees and the authority of each.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes committees and subcommittees.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

**STATEMENT OF EMERGENCY  
202 KAR 7:110E**

This emergency administrative regulation establishes requirements for referral of matters for criminal prosecution by the Board. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:110 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:110E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)**

**202 KAR 7:110E. Referral of matters for criminal prosecution.**

RELATES TO: KRS 311.652 to 311.658, 311.990(21)  
STATUTORY AUTHORITY: KRS 311.6523(7)(a), 311.6541  
EFFECTIVE: February 15, 2001  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 and 311.6523(7)(a) require the board to promulgate administrative regulations relating to the emergency medical services system.

Section 1. (1) If an employee of the board discovers criminal activity or suspects criminal activity by any person or organization not regulated by the board either during an inspection or during the investigation of a complaint, he or she shall make a written report to the executive director and to the prosecutorial officer of relevant jurisdiction relating the facts of the matter.

(2) If an employee of the board discovers criminal activity or suspects criminal activity other than activity regulated by the board by any person or organization who is subject to the jurisdiction of the board, the employee shall make a written report to the executive director and to the prosecutorial officer of relevant jurisdiction relating the facts of the matter.

MARK K. BAILEY, Chairperson  
APPROVED BY AGENCY: February 13, 2001  
FILED WITH LRC: February 15, 2001 at noon

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes procedures for referral of matters for criminal prosecution.

(b) The necessity of this administrative regulation: to establish procedures for referral of matters for criminal prosecution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute allows board to regulate the emergency medical services system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes procedures for referral of matters for criminal prosecution.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes procedures for referral of matters for criminal prosecution.

**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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

**STATEMENT OF EMERGENCY  
202 KAR 7:120E**

This emergency administrative regulation establishes requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:120 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:120E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)**

**202 KAR 7:120E. Mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.**

RELATES TO: KRS 311.652 to 311.658  
STATUTORY AUTHORITY: KRS 311.6523(7)(a), 311.654, 311.6541, 311.6577

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the board to promulgate administrative regulations relating to emergency medical services system including licensure and certification and restrictions on licensure or certification.

Section 1. (1) If the board has reasonable cause to believe that any licensee, applicant for licensure, person certified by the board, or

applicant for certification by the board is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination, or both, by a physician or psychologist designated by the board. Upon the failure of the person to submit to a mental or physical examination, or both, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension or deny the application until the person submits to the required examination.

(2) Every licensee, applicant for licensure, person certified by the board, or applicant for certification by the board shall be deemed to have given consent to submit to a mental or physical examination, or both, when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports of the grounds of privileged communication.

(3) The licensee, applicant for licensure, person certified by the board, or applicant for certification by the board shall bear the cost of any mental or physical examination, or both ordered by the board.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moliney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.

(b) The necessity of this administrative regulation: to establish requirements for mental or physical examination of licensee or applicant, suspension or denial of application until person submits to examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires the board to regulate emergency medical services, including licensure and certification of entities or persons licensed or certified by the Kentucky Board of Emergency Medical Services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the necessity for a mental or physical examination, suspension or denial of application until a person submits to examination.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all applicants, certified EMTs and licensed paramedics similarly.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

#### STATEMENT OF EMERGENCY

202 KAR 7:130E

This emergency administrative regulation establishes procedure for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:130 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:130E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES

(New Emergency Administrative Regulation)

**202 KAR 7:130E. Procedure for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.**

RELATES TO: KRS 311.652 to 311.658, 311.990(21)

STATUTORY AUTHORITY: KRS 311.6523(7)(a), 311.654, 311.6541, 311.6577

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 requires the board to promulgate administrative regulations relating to the emergency medical services system, including investigation and discipline of entities or persons licensed or certified.

Section 1. (1) The chairman of the board or the chairman's designee in writing may determine that immediate temporary suspension of a license or certification against which disciplinary action or an investigation is necessary in order to protect the public. When it appears that this action may be necessary, the executive director, or the executive director's designee in writing shall issue an emergency order suspending the person's or organization's license or certification. Upon appeal of an emergency order, an emergency hearing shall be conducted in accordance with KRS 13B.125.

(2) No board member shall be disqualified from serving on a disciplinary action hearing panel for the reason that he or she has previously sat on a hearing panel considering temporary suspension of the same license or certification.

(3) The board shall expedite disciplinary actions in which a license

or certification has been temporarily suspended.

(4) The order of immediate temporary suspension shall remain in effect until either retracted or superseded by final disciplinary action by the board. In cases where disciplinary action is imposed, the board additionally may order that the temporary suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.

(b) The necessity of this administrative regulation: to establish procedures for immediate temporary suspension of license or certification against which disciplinary action or investigation is pending.

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires the establishment of regulations for the emergency medical services system, including investigation and discipline of entities and persons licensed or certified.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the necessity for immediate temporary suspension of licensure or certification when disciplinary action or an investigation is pending.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all license or certificate holder the same where suspension is necessary to protect the public.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the ex-

penditures 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

#### STATEMENT OF EMERGENCY

202 KAR 7:140E

This emergency administrative regulation establishes procedure for investigation and disposition of complaints. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:140 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:140E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:140E. Investigation and disposition of complaints.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523(7)(a), 311.654, 311.6541, 311.6577

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6577 and 311.6523(7)(a) require the board to promulgate administrative regulations to protect and safeguard the health and safety of the citizens of Kentucky and to provide for procedures in the receipt, investigation and disposition of complaints.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, person certified by the board, or applicant for licensure or certification, or unlicensed individual or organization if the complaint alleges acts which may be in violation of KRS 311.652 to 311.658.

(2) All complaints shall be in writing and shall be dated and fully identify the complainant by name and address. The chairman of the board, the executive director, or the designee of the chairman or executive director, may file a complaint based upon information received orally, by telephone, or in written communication, if the facts of the complaint are determined to be accurate and indicate acts that may be in violation of the provisions of KRS 311.652 to 311.658.

(3) A certified copy of a court record for a violation, misdemeanor, or felony conviction shall be considered a valid complaint.

(4) Complaints shall be investigated. The staff may request an informal conference with the individual or organization against whom the complaint has been made.

(5) Complaints shall be evaluated to determine if an apparent violation has been committed. The quality assurance committee, the executive director, or the executive director's designee in writing shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public. If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the board member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) The complaint may be filed away if there is a determination that there is insufficient evidence of a violation or that a violation has



not occurred.

(b) The complaint may be referred to the quality assurance committee by the executive director or the executive director's designee in writing for disposition pursuant to this section; or

(c) It may be determined that a violation of KRS 311.652 to 311.658 or the administrative regulations of the board has occurred.

(2) Upon determination that there is probable cause that a violation of KRS 311.652 to 311.658 or the administrative regulations of the board has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section; or

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS Chapter 13B, 311.652 to 311.658, 202 KAR 7:150.

(b) Notice of the hearing and charges shall be mailed by certified mail, return receipt to the last known address of the licensee, person certified by the board, or applicant. Service shall be deemed complete upon mailing whether or not the notice is claimed.

(c) Notice of the hearing and charges shall be signed by the executive director or the executive director's designee in writing.

(4) Agreed order.

(a) The board may enter into an agreement with an applicant, licensee, or person certified by the board for voluntary surrender, suspension, probation, reinstatement, limitation of license, or reprimand, and to impose a civil penalty. The terms of the agreement may include other conditions or requirements to be met by the applicant, licensee, or person certified by the board such as those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms which insure the protection of public health and safety, or which serve to educate or rehabilitate the applicant, licensee, or person certified by the board.

(c) The agreed order, when approved by the board, shall terminate the investigation of a specific complaint.

(5) Consent decree.

(a) If a licensee, person certified by the board, or applicant agrees to waive his or her right to a hearing and there is no evidence of intentional violation of the licensing provisions of KRS 311.652 to 311.658, the board may issue a consent decree in accordance with the provisions of KRS 311.6577 to impose a fine against the licensee, person certified by the board, or applicant who has:

1. Practiced as an emergency medical technician first responder, emergency medical technician, or paramedic without a current, active certification or license issued by the board.

2. Practiced as an emergency medical technician first responder emergency medical technician or paramedic after the expiration of current certification or licensure issued by the board.

3. Obtained a license, certification, or application on the basis of a check for an application fee, certification fee, or license fee which was returned unpaid by the bank.

4. Qualified for a consent decree to cure noncompliance with continuing education requirements.

5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the period for receipt of such education.

(b) The use of the consent decree shall be restricted only to those applicants, licensees, or person certified by the board described above and who have not violated any other provision of KRS 311.652 to 311.658 or any other laws of the Commonwealth of Kentucky or the United States.

(c) The license or certification may be issued by the board staff after the applicant, person certified by the board, or licensee meets all requirements for licensure or certification and after payment of the fine by the applicant, person certified by the board, or licensee.

(d) Upon ratification by the board of the consent decree the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 311.652 to 311.658 and the matter resolved as directed therein.

Section 3. The executive director or the executive director's designee in writing shall notify the complainant, the person against whom the complaint was made, and other persons and organizations required by law of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a limited license or limited certification may include, but are not limited to, the following:

(1) Prohibiting the performance of specific acts such as access to, responsibility for, or the administration of controlled substances; administration of any medication, supervisory functions, or any act which the applicant, licensee, or person certified by the board cannot safely perform.

(2) Requiring the applicant, person certified by the board, or licensee have continuous, direct, on-site supervision by a certified paramedic or physician.

(3) Specifying the applicant's, the person certified by the board, or licensee's practice setting.

(4) Specifying the types of patients to whom the applicant, the person certified by the board, or the licensee may give care.

(5) Requiring the applicant, the person certified by the board, or the licensee to notify the board in writing of any change in name, address or employment.

(6) Requiring the applicant, the person certified by the board, or the licensee to have his or her employer or medical director or both submit to the board written reports of performance or compliance with the requirements set by the board.

(7) Requiring the applicant, the person certified by the board, or the licensee to submit to the board evidence of physical or mental health evaluations, counseling, therapy or drug screens, or any combination thereof.

(8) Meeting with representatives of the board.

(9) Issuing the license or certification for a specified period of time.

Section 5. A limited license or limited certification may be issued to:

(1) An applicant, person certified by the board, or licensee who has been subjected to disciplinary action by the board pursuant to KRS 311.652 to 311.658; or

(2) An applicant, person certified by the board, or licensee who holds a license or certification with restrictions or conditions in another jurisdiction as a result of disciplinary action and has had disciplinary action by the board pursuant to KRS 311.652 to 311.658.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes the investigative process and disposition of complaints against entities or persons licensed or certified by the Kentucky Board of Emergency Medical Services.

(b) The necessity of this administrative regulation: to establish procedures for receipt, investigation and disposition of complaints.

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires procedures in the systems of the emergency medical services, including the investigation and disposition of complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes the process for receipt, investigation and disposition of complaints.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all license or certificate holders the same as it concerns complaints received, investigated and disposed by the board.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

#### STATEMENT OF EMERGENCY 202 KAR 7:150E

This emergency administrative regulation establishes procedure for investigation and disposition of complaints. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:150 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:150E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

202 KAR 7:150E. Procedures for disciplinary hearings pursuant to KRS 311.652 to 311.658.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.6524, 311.654, 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 and 211.964 require the board to promulgate administrative regulations relating to the procedures for a hearing for the denial, limitation,

probation, suspension, or revocation of the license of any licensee, applicant for licensure, person certified by the board, or an applicant for certification by the board.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel. (1)(a) Except as provided in paragraph (b) of this subsection a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the quality assurance committee and a hearing officer, who shall be an assistant Attorney General.

(b) A hearing officer and one (1) member of the quality assurance committee may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license or certification; or

2. Removal of a license or certification from probationary status.

(2) A board member or quality assurance committee member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

(a) Discussed the merits of the action with agency staff;

(b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of the disciplinary action.

(3) The hearing shall be recorded or shall be transcribed by a court stenographer.

Section 3. Response to Charges. At least ten (10) days prior to the scheduled hearing date, the licensee, person certified by the board, or applicant shall file with the board written response to the specific allegations contained in the notice of charges. An allegation not properly answered shall be deemed admitted. The panel shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by an unanimous vote of the quality assurance committee members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for the purpose of deliberations. Each member of the panel shall have one (1) vote. In the case of a tie vote, the tie shall be broken by the hearing officer.

(2) Upon the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by the licensee, person certified by the board, or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee, person certified by the board, or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Fee. If the order of the board is adverse to the licensee, the person certified by the board, or the applicant, or if the hearing is scheduled at the request of a licensee, person certified by the board, or applicant, a hearing fee in an amount equal to the cost of recording, stenographic services, and the cost of the hearing officer shall be assessed against the licensee, the person certified by the board, or the applicant for relief from sanctions previously imposed by

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the board pursuant to the provisions of KRS 311.652 to 311.658. In a case of financial hardship, the board may waive all or part of the fee.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes procedures for disciplinary hearings pursuant to KRS 311.652 to 311.658.

(b) The necessity of this administrative regulation: to conform with requirements of KRS 311.652 to 311.658.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes procedures for disciplinary hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes procedures for disciplinary hearings.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation relates to committees and subcommittees.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

### STATEMENT OF EMERGENCY

202 KAR 7:160E

This emergency administrative regulation establishes procedure for investigation and disposition of complaints. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:160 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:160E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:160E. Offenses.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.6524, 311.654, 311.6541

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541 and 211.964 requires the board to promulgate administrative regulations relating to offenses.

Section 1. (1) The board shall have the power to reprimand, deny, limit, revoke, probate, or suspend any license or certification issued by the board or applied for in accordance with KRS 311.652 to 311.658, or to otherwise discipline a licensee, person certified by the board, or applicant, or to deny admission to the licensure or certification examination, or to require evidence of evaluation and therapy upon proof that the person or organization:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or certification.

(b) Has been convicted of, pled guilty to, or entered an Alford plea to a violation, misdemeanor, or felony which involved fraud, deceit, a breach of trust, or physical harm or endangerment to others, acts that bear directly on the qualification or ability of the applicant, licensee, or person certified by the board to practice the acts authorized by the license or certification.

(c) Has been convicted of, pled guilty to, or entered an Alford plea to a violation of KRS 189A.010;

(d) Has been convicted of, pled guilty to, or entered an Alford plea to a felony violation of KRS 189A.010;

(e) Has been convicted of, pled guilty to, or entered an Alford plea to a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 410, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined by KRS 510.010 with a patient while the patient was under the care of the licensee, person certified by the board, or applicant;

(f) Has been convicted of, pled guilty to, or entered an Alford plea to a misdemeanor or felony offense as defined in KRS Chapter 508 with a patient.

(g) Has negligently or willfully acted in a manner inconsistent with the practice of emergency medical technician first responder, emergency medical technician, or paramedic, or entity licensed or certified by the board.

(h) Is unfit or incompetent to practice as an emergency medical technician first responder, emergency medical technician, or paramedic by reason of negligence or other causes, including, but not limited to, being unable to practice with reasonable skill or safety;

(i) Abuses use of controlled substances, prescription medications, or alcohol;

(j) Has used or misappropriated any drugs placed in his or her custody for administration, or for use of others;

(k) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on an ambulance run form, patient care form, or other essential document relating to patient care or the safe operation of an entity licensed or certified by the board;

FISCAL NOTE ON LOCAL GOVERNMENT

(l) Has a license or certification to practice denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or certification to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;

(m) Has violated any of the provisions of KRS 311.652 to 311.658 or any other statute under the jurisdiction of the board;

(n) Has violated any lawful order or directive previously entered by the board; or statute under the jurisdiction of the board;

(o) Has violated any administrative regulation promulgated by the board;

(2) If the board substantiates that sexual contact has occurred between a person licensed or certified by the board and a patient while the patient was under the care of or in a professional relationship with the person certified or licensed by the board, the person's license or certification may be revoked or suspended with mandatory treatment of the licensee or person certified by the board as prescribed by the board. The board may require that person licensed or certified by the board to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes procedures for addressing offenses.

(b) The necessity of this administrative regulation: to conform with requirements of KRS 311.652 to 311.658.

(c) How this administrative regulation conforms to the content of the authorizing statutes: the statute requires the establishment of committees and subcommittees to address issues such as offenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the committees and subcommittees and the authority of each to address offenses.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation relates to committees and subcommittees.

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: N/A

STATEMENT OF EMERGENCY  
202 KAR 7:405E

This emergency administrative regulation establishes requirements to become a paramedic student. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:405 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:405E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)

202 KAR 7:405E. Requirements to become a paramedic student.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Board of Emergency Medical Services to establish requirements to become a paramedic student.

Section 1. Basic Qualifications. (1) A person desiring to be a paramedic student shall:

(a) Be at least eighteen (18) years of age;

(b) Have successfully graduated from an accredited high school or possess a general education diploma (GED);

(c) Have the ability to speak, write, and understand the English language;

(d) Be currently certified by the board or by the National Registry of Emergency Medical Technicians as an emergency medical technician-basic;

(e) Send a completed and signed "Application to Become a Paramedic Student"; and

(f) Pay the fee specified in 202 KAR 7:491.

(2) A person desiring to be a paramedic student shall not:

(a) Have an active communicable disease for which an accommodation cannot be made under the Americans With Disabilities Act;

(b) Have been convicted of, pled guilty to, or entered an Alford plea to a violation of KRS 189A.010 or similar statute in another state during the previous five (5) years;

(c) Be currently adjudicated as mentally ill pursuant to KRS Chapter 202A or as mentally deficient pursuant to KRS Chapter 202B;

(d) Have been convicted of, pled guilty to or entered an Alford Plea to a felony offense under KRS Chapters 218A, 507, 508, 510, 530.064, or 531.310;

(e) Currently have their license or certification as a medical doctor,

nurse, paramedic, emergency medical technician, or emergency medical technician-first responder denied, limited, suspended, probated, or revoked by the board or by a licensing agency in another state or territory.

Section 2. Action of Board upon Receipt of Application to Become a Paramedic Student. Upon receipt of an application to be a paramedic student from the educational institution, the board shall:

- (1) Conduct a criminal record check;
- (2) Conduct a check for violations of KRS 189A.010 or a similar statute in another state;
- (3) Verify information contained in the application to become a paramedic student; and
- (4) Notify the person who filed the application to be a paramedic student and the prospective student's employer, if the employer is an emergency medical services agency or organization, as to whether the board has or has not accepted the application;
- (5) If the application is not accepted, the board shall state the reasons why the application was not accepted;
- (6) If the application was not accepted, the board shall notify the applicant of the means of appealing the decision of the board.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: establishes requirements to become a paramedic student.
  - (b) The necessity of this administrative regulation: establishes requirements to become a paramedic student.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements to become a paramedic student.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements to become a paramedic student.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
  - (a) How the amendment will change this existing administrative regulation:
  - (b) The necessity of the amendment to this administrative regulation:
  - (c) How the amendment conforms to the content of the authorizing statutes:
  - (d) How the amendment will assist in the effective administration of the statutes:
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 0
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: 0
  - (b) On a continuing basis: 0
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
- (9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all individuals equally.

#### 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
2. State what unit, part or division of local government this administrative regulation will affect.
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
 

Revenues (+/-): 0  
Expenditures (+/-): 0  
Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:407E

This emergency administrative regulation establishes the paramedic training requirements. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:407 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:407E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:407E. Paramedic training requirements.

RELATES TO: KRS 311.652 to 311.658  
STATUTORY AUTHORITY: KRS 311.6523, 311.654  
EFFECTIVE: February 15, 2001  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Board of Emergency Medical Services to establish paramedic training requirements.

Section 1. Paramedic Training Sequence. In order to be licensed as a paramedic a person shall:

- (1) Have filed an application to become a paramedic student not less than thirty (30) days prior to the class in which the student is enrolled is scheduled to begin;
- (2) Received permission from the board to enroll as a paramedic student;
- (3) Enroll in a paramedic course offered by an educational institution licensed by the board;
- (4) Successfully complete a paramedic course offered by an educational institution licensed by the board;
- (5) Successfully pass the examinations for paramedics of the National Registry of Emergency Medical Technicians;
- (6) Not have committed any act which would disqualify the applicant from being a paramedic student pursuant to 202 KAR 7:481;
- (7) Submit an application to become a paramedic to the board;
- (8) Pay the paramedic license fee specified by 202 KAR 7:491E.

Section 2. Action of the Board upon Receipt of Application to Become a Paramedic. Upon receipt of an application to be a paramedic, the board shall:

- (1) Verify that the applicant has successfully completed the requisite training;
- (2) Verify that the training was conducted by an institution licensed by the board;
- (3) Verify that the applicant is not prohibited from becoming a

paramedic based on the criteria specified in 202 KAR 7:405.

(4) Verify that the applicant has successfully passed the examinations for paramedics required by the National Registry of Emergency Medical Technicians;

(5) If the applicant has successfully completed all of the requirements specified in Section 1 of this administrative regulation and is not otherwise prohibited from becoming a paramedic the board shall issue a paramedic license to the applicant.

(6) If the applicant has not successfully completed all of the requirements specified in Section 1 of this administrative regulation or is otherwise prohibited from becoming a paramedic the board shall notify the applicant, and the educational institution, of the deficiencies, what shall be done to correct them, or if not correctable, why the license will not be issued.

(7) If the applicant is denied a license the board shall notify the applicant how the board's decision can be appealed.

Section 3. Paramedic Training Requirements. (1) A paramedic student shall successfully complete a training program containing not less than the median number of didactic, practical laboratory, and clinical hours for each subject and skill as contained in the "Field and Pilot Test Didactic and Practical Laboratory Hours Report" and "Field and Pilot Test Clinical Report" of the "EMT-Paramedic National Standard Curriculum" documents accompanying the 1998 emergency medical technician-paramedic training curriculum of the United States Department of Transportation Training Course published by the United States Department of Transportation. A paramedic student shall complete a field internship of not less than 500 hours. In addition the paramedic student shall successfully complete additional training as specified by KRS 311.653 relating to acquired immunodeficiency syndrome and KRS 311.660 relating to determination of death. The board specifically adopts by reference the material specified above but does not adopt student or instructor qualifications and requirements, institutional qualifications and requirements or other materials in the 1998 paramedic training curriculum of the United States Department of Transportation.

(2) In no case shall a paramedic training program last more than thirty (30) months. The educational institution may choose any time above the minimum number of hours specified by 202 KAR 7:405 for the paramedic student to successfully complete the paramedic training program offered by the educational institution. If the paramedic student does not successfully complete the paramedic training program within the lesser of thirty (30) months or the time specified by the educational institution the paramedic student shall be deemed to have failed the program.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moliney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes paramedic training requirements.

(b) The necessity of this administrative regulation: to establish paramedic training requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes paramedic training requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes paramedic training requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 287 paramedic educational institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all individuals equally.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:409E

This emergency administrative regulation establishes requirements for educational institutions for paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:409 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:409E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:409E. Educational institution.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Board of Emergency Medical Services to establish requirements for an agency that will implement training of paramedics.

Section 1. Requirements for Institution to Conduct Paramedic Training - Personnel, Facilities, Equipment. An institution desiring to become an educational institution to conduct paramedic training shall submit to the board evidence that:

(1) Its classroom facility will accommodate the expected number of students in the paramedic class;

(2) It possesses or has access to all of the equipment required to conduct a paramedic class and that the mandatory equipment is in proper working order;

(3) It possesses or has access to all of the supplies required in adequate quantities; to conduct a paramedic class;

(4) It has employed or contracted with a course coordinator;

(5) It has employed or contracted with a medical director who is a physician licensed to practice medicine in Kentucky;

(6) Each paramedic instructor which it employs, contracts with, or permits to instruct in a paramedic class is qualified to teach the subject instructed;

(7) It has sufficient personnel, office equipment, file storage, and space to keep all of the records required by the board by administrative regulation relating to the conduct of a paramedic class and the training of its students;

(8) A written contract or agreement with a licensed hospital permitting the students in its paramedic classes to engage in clinical practice and to gain clinical skills;

(9) A written contract or agreement with a Kentucky licensed Class I ground ambulance service which provides advanced life support permitting the students in its paramedic classes to engage in field internship.

Section 2. Recordkeeping Requirements. (1) The educational institution shall keep all records required by statute, this administrative regulation or other administrative regulation for a period of not less than five (5) years, unless another statute or administrative regulation specifies a longer period.

(2) If an educational institution goes out of business or ceases paramedic instruction prior to the expiration of the record retention schedule specified in this administrative regulation, the educational institution shall transfer all records required to be kept by statute or administrative regulation to the board and the board shall retain the records for the required period or transfer the records to the Department of Libraries and Archives to retain for the required period.

(3) Records to be kept by the educational institution with regard to each paramedic class taught.

(a) The name and address of each person that applied to attend the class;

(b) The name and address of each person that was admitted to the class;

(c) The name and address of each person who voluntarily left the class prior to its completion;

(d) The name and address of each person removed from the class and the reasons for each person's removal from the class;

(e) The attendance roster for each class, signed by each student and cosigned by the instructor of each class;

(f) The name and address of each instructor and the topic which each instructor taught and the date on which that topic was taught;

(g) Each written and skill examination taken by each student and the results thereof;

(h) Clinical skills observations for each student;

(i) The name and address of each student who was disciplined by the educational institution whose discipline was class related, the reason for the discipline, and the discipline administered;

(j) The name and address of each student successfully completing the course of instruction;

(k) The name and address of each student failing to successfully complete the course of instruction and the reason therefor; and

(l) Any other record the institution maintains on a paramedic student.

Section 3. Paramedic Class Authorization. (1) Not less than sixty (60) days prior to the start of a paramedic class the implementing institution shall notify the board in writing that the class will commence, what date the class will commence, and what date each phase, didactic, clinical, and field experience, is expected to begin and end.

(2) The educational institution shall also submit the name and address of the course coordinator, the medical director, a written class schedule for the paramedic class identifying each didactic subject to be taught, each practical laboratory subject to be taught and each

clinical rotation of the clinical hours, together with the name, address, and qualifications of each instructor to be utilized in teaching each subject or rotation and a copy of this material may be provided, in writing, to the paramedic student's emergency medical service's employer, if employed, and the emergency medical service's medical director upon written request.

(3) Upon receipt of the notification the board shall assign a class number to the class and notify the educational institution in writing as to the number assigned. This number shall be utilized as the tracking number for that paramedic class and shall not be used for any other paramedic class.

Section 4. Notifications to be Made to Board During a Paramedic Class. Upon request of the board, the educational institution shall submit to the board during the conduct of a paramedic class:

(1) A written copy of each daily and subject matter class roster, signed by the instructor;

(2) The name, address, and qualifications of each person who substituted for an instructor whose name was originally submitted to teach a didactic subject, practical laboratory, or clinical rotation, together with the reasons for the substitution.

Section 5. Paramedic Class Completion. (1) Upon a paramedic student's successful completion of paramedic training the educational institution and its medical director shall certify, in writing, to the board:

(a) The name, address, and paramedic student number of each student;

(b) The student successfully has met all academic requirements of the educational institution taken by the student and each student has successfully completed all didactic subject, practical laboratory subject, clinical rotation and that the standards for completion met or exceeded those in the 1998 U.S. Department of Transportation Curriculum for Emergency Medical Technician-Paramedic;

(2) When a paramedic class is completed the educational institution and the medical director of the class shall further certify, in writing, to the board that:

(a) That the student has completed each required subject, skill, laboratory, and field training and that the number of hours reported meets or exceeds the number of hours required by administrative regulation;

(b) Each instructor was qualified to teach the subject or skill taught;

(c) That the educational institution had and utilized all equipment and supplies required by administration for the conduct of the paramedic class;

(d) That no violations of administrative regulations occurred during the class.

(3) In lieu of certifying that no violations of administrative regulations occurred during the class or falsely certifying other matters specified in this administrative regulation, the medical director shall list all violations of statutes or administrative regulations which occurred during the paramedic class showing the dates and reasons therefor. If the board believes that a violation of statute or administrative is substantial and might impair the credibility of the paramedic class or the ability of its graduates to properly perform as a paramedic, the board shall take appropriate disciplinary action upon its own motion.

(4) The certification and report required by this section shall be filed with the board not more than ten (10) days following each student's completion of the paramedic class.

(5) Knowingly or recklessly filing a false, incomplete, or misleading certification, or failing to generate or maintain required documentation shall be cause for the board to bring disciplinary proceedings against the medical director, course director, or the educational institution. A finding by the board that the certification contained false, incomplete, or misleading information may result in the suspension of the educational institution, the medical director, or the course director from conducting paramedic education or supervision for a period up to and including five (5) years for a first offense and permanently for a second offense.

Section 6. Paramedic Class Inspection. (1) A representative of the board may inspect each paramedic class in the Commonwealth at least once during the conduct of the class and make a written report to



the board as to its findings with regard to the quality of the class and the adherence of the educational institution to the applicable statutes and administrative regulations.

(2) The board shall cause an inspection of a paramedic class where the board has received a written complaint that the class is not being conducted in compliance with the applicable statutes and administrative regulations.

(3) If the representative of the board finds that a paramedic class is not being conducted in compliance with the applicable statutes and administrative regulations, the representative of the board shall issue a written notice of violation to the educational institution and shall report the violation to the board which shall then proceed in accordance with KRS Chapter 13B and applicable administrative regulations.

(4) The board shall cause an inspection of any educational institution that conducts a paramedic class that has a failure rate of twenty (20) percent or more on the student's second full attempt under National Registry to pass the paramedic examination of the National Registry of Emergency Medical Technicians.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for paramedic educational institutions.

(b) The necessity of this administrative regulation: establishes requirements for paramedic educational institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for educational institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements to become institution providing educational services to paramedic students.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 287 paramedic educational institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all educational institutions equally.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:413E

This emergency administrative regulation establishes requirements for continuing education. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:413 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:413E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:413E. Continuing education.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish requirements for continuing education for paramedics.

Section 1. (1) Each paramedic shall successfully complete not less than sixty (60) hours of continuing education each two (2) year period, which is validated by instructor, medical director, training officer, or provider that shall include provider-level status in ACLS.

(2) The board may specify, from time to time, certain new knowledge or skills which a paramedic shall successfully complete during the yearly continuing education.

(3) The paramedic shall submit written evidence of successful completion of continuing education to the board biannually, not less than thirty (30) days prior to the anniversary of the issue date of the paramedic's license.

(4) The board may cause the auditing of continuing education and continuing education records by an employee or agent of the board at any time for the previous licensure period.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for continuing education for paramedics.

(b) The necessity of this administrative regulation: establishes requirements for continuing education for paramedics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for continuing education for paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements for continuing education for paramedics.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all paramedics equally.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY

202 KAR 7:426E

This emergency administrative regulation establishes requirements for licensure and renewal of licensure. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:426 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:426E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:426E. The paramedic license.

RELATES TO: KRS 311.652 to 311.658, 311.990(21)

STATUTORY AUTHORITY: KRS 311.6523, 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish requirements for the paramedic license.

Section 1. General Provisions. (1) The paramedic license shall be issued initially, upon successful completion of paramedic training and the successful passing of the paramedic examinations of the National Registry of Emergency Medical Technicians;

(2) The paramedic license shall be renewed, upon successful completion of continuing education required by administrative regulation;

(3) The paramedic license shall be reissued upon successful completion of the disciplinary requirements of the board or the successful completion of additional continuing education upon a lapse of license, as appropriate.

(4) A paramedic license shall not authorize a paramedic to perform any skill or procedure, or administer any medication, or take any other action which the paramedic has been forbidden to perform by the paramedic's medical director or the paramedic's employer.

Section 2. Period of Licensure. (1) The paramedic license shall be valid for a period of two (2) years from its date of issuance, unless disciplinary procedures provide otherwise.

(2) The paramedic renewal license shall be valid for a period of two (2) years from its date of issuance, unless disciplinary procedures provide otherwise.

(3) The limited paramedic license shall be valid for the period, not to exceed two (2) years, specified by the board following a paramedic disciplinary proceeding.

Section 3. Expiration of License. (1) Following the expiration of a paramedic license, a paramedic shall no longer perform any skills or procedures, or administer any medications, or performing any other action as a paramedic until the license is reinstated as provided by law.

(2) A license shall be considered as expired when the paramedic does not renew the license by the time the license expires as provided on the face of the license.

(3) An expired license cannot be converted to an inactive license without the permission of the board, for good cause shown.

Section 4. Reactivation of an Expired License. (1) An expired license may be reactivated by paying the appropriate renewal fee and:

(a) If the license has been expired for less than three (3) months, no other action;

(b) If the license has been expired for three (3) months but less than six (6) months, by successful completion fifteen (15) hours of continuing education as specified by the medical director of the paramedic;

(c) If the license has been expired for six (6) months but less than one (1) year by successful completion of thirty (30) hours of continuing education as specified by the medical director of the paramedic.

(2) An expired license that has been expired for one (1) year or more may be renewed by paying the appropriate renewal fee and by successful completion of the continuing education specified by the board. Reactivation of an expired license which has been expired for one (1) or more shall be at the discretion of the board and may be renewed only upon good cause shown for failure to renew the license in a timely manner.

(3) Training specified in this section is in addition to any other continuing education requirement and can only be applied to license reactivation, and shall not be applied to any other continuing education requirement.

Section 5. Inactive License. At any time a paramedic may request that the paramedic license shall be placed on inactive status for a specified period not to exceed five (5) years or for an indefinite period not to exceed five (5) years. A paramedic whose license is on inactive status shall be governed by the provisions of Section 3 of this administrative regulation with regard to the performance of skills or procedures, administering of medications, or taking any other action which a paramedic could take until the license is reactivated as provided in this administrative regulation.

Section 6. Reactivation of Inactive License. A paramedic may reactivate the paramedic license by the successful completion of the most recent continuing education period together with training on any new material introduced during the period in which the paramedic's license was inactive. The training on new material shall be specified by the board. The continuing education and additional training specified in this section shall be in lieu of the annual continuing education requirement for the period during which the license was inactive. An inactive license may be reactivated by paying the normal license renewal fee.

Section 7. Retention of License without Supervision of Medical Director. A paramedic who does not have a medical director shall not lose their paramedic license so long as they:

- (1) Notifies the board in writing within three (3) working days that they are without a medical director;
- (2) Is governed by the provisions of Section 3 of this administrative regulation with regard to limitation of practice during any time when the paramedic without a medical director;
- (3) Obtains the continuing education specified by the board by administrative regulation and submits evidence of successful completion of the continuing education directly to the board; and
- (4) Renews the paramedic license as provided by administrative regulation;
- (5) Notifies the board within three (3) working days that the paramedic is now under the direction of a new medical director.

Section 8. Report of Discipline. (1) A paramedic who is licensed in Kentucky and who is licensed or certified in another state who is disciplined by the licensing or certifying authority in that other state the paramedic shall:

- (a) Report in writing that charges are pending to the board within three (3) working days and include details as to the state or other jurisdiction, the charges and circumstances; and
  - (b) Report in writing within three (3) working days to the board, the results of any hearing, including any discipline rendered.
- (2) The board may initiate action on its own against any paramedic licensed in Kentucky whose license in another state or jurisdiction is revoked, suspended, limited, or otherwise impaired.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moleney, PLLC. 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: establishes requirements for licensure and renewal of paramedic licensure.
  - (b) The necessity of this administrative regulation: establishes requirements for licensure and renewal of paramedic licensure.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for licensure and renewal of licensure.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements for licensure and renewal of licensure for paramedics.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
  - (a) How the amendment will change this existing administrative

regulation:

- (b) The necessity of the amendment to this administrative regulation:
- (c) How the amendment conforms to the content of the authorizing statutes:
- (d) How the amendment will assist in the effective administration of the statutes:
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: 0
  - (b) On a continuing basis: 0
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
- (9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all paramedics equally.

#### 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
2. State what unit, part or division of local government this administrative regulation will affect.
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
 

Revenues (+/-): 0  
Expenditures (+/-): 0  
Other Explanation:

#### STATEMENT OF EMERGENCY - 202 KAR 7:433E

This emergency administrative regulation establishes requirements for out of state paramedic not licensed in Kentucky. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:433 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:433E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

202 KAR 7:433E. Out-of-state paramedic not licensed in Kentucky

RELATES TO: KRS 311.652 to 311.658, 311.990(21)  
STATUTORY AUTHORITY: KRS 311.6523, 311.654  
EFFECTIVE: February 15, 2001  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Kentucky Board of Emergency Medical Services to adopt

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rules and administrative regulations relating to paramedics. The function of this administrative regulation is to address the issue of what procedures out-of-state paramedic not licensed in Kentucky may perform.

Section 1. Procedures Which an Out-of-state Paramedic may Perform in Kentucky if not Licensed in Kentucky. (1) A paramedic licensed or certified in another state may utilize in Kentucky, subject to the limitations specified in this administrative regulation, any skill, procedure, or medication in Kentucky which the paramedic may use in the state in which the paramedic is licensed, subject to the control of the paramedic's medical director or protocols.

(2) Situations in which the use of procedures specified in subsection (1) of this section may be used:

(a) Transporting a patient from out of state to a medical facility or other location in Kentucky;

(b) Transporting a patient from Kentucky to a medical facility or other location out of state;

(c) Transporting a patient from out of state through Kentucky to another location out of state;

(d) When called upon to assist in providing medical and related care during a disaster or emergency pursuant to a request made pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for out-of-state paramedic not licensed in Kentucky.

(b) The necessity of this administrative regulation: establishes procedures an out-of-state paramedic not licensed in Kentucky may perform.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes procedures an out-of-state paramedic not licensed in Kentucky may perform.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the procedures an out-of-state paramedic not licensed in Kentucky may perform.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: unknown number of out-of-state paramedics.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all out-of-state paramedics equally.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY 202 KAR 7:435E

This emergency administrative regulation establishes requirements for supervision of out of state paramedic student. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:435 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:435E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:435E. Supervision of out-of-state paramedic student

RELATES TO: KRS 311.652 to 658

STATUTORY AUTHORITY: KRS 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish requirements for supervision of out-of-state paramedic student.

Section 1. The medical director of a licensed Class I ambulance service may accept an out-of-state paramedic student for supervision on a field internship. The out-of-state paramedic student shall not perform any skill or procedure or administer any medication which a Kentucky paramedic student cannot perform.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for supervision of out of state paramedic student.

(b) The necessity of this administrative regulation: establishes re-

quirements for supervision of out of state paramedic student.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for supervision of out of state paramedic student.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements for supervision of an out of state paramedic student.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: unknown number of out-of-state paramedic students, unknown number of Class I ground ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all out-of-state paramedic students equally.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:436E

This emergency administrative regulation establishes procedure for licensing of paramedics from other states; graduate paramedics, and issuance of temporary licenses. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:436 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:436E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

**202 KAR 7:436E. Procedure for licensing paramedic who is licensed or certified in another state or territory under the jurisdiction of the United States or who is nationally registered.**

RELATES TO: KRS 311.652 to 311.658, 311.990(21)

STATUTORY AUTHORITY: KRS 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 authorizes the Board of Emergency Medical Services to promulgate administrative regulations relating to licensure and practice of paramedics. The purpose of this administrative regulation is to establish procedures whereby paramedics licensed or certified in other states may apply for licensure in Kentucky.

Section 1. Who is Eligible to Become a Paramedic in Kentucky. The following persons from out-of-state are eligible for licensure as a paramedic in Kentucky:

(1) A person registered as a paramedic by the National Registry of Emergency Medical Technicians; or

(2) A person currently licensed or certified as a paramedic in another state or territory under the jurisdiction of the United States whose training the board determines is equal to or greater than that in Kentucky; and

(3) Who meets the requirements to become a paramedic student in Kentucky; and

(4) Has successfully completed additional training in acquired immune deficiency syndrome and determination of death as required by applicable Kentucky statutes and administrative regulations.

Section 2. Application Procedure. (1) A paramedic specified in Section 1 of this administrative regulation desiring to become a paramedic in Kentucky shall:

(a) Submit an application containing the information required in 202 KAR 7:405 to become a paramedic student and:

1. Details of their paramedic education including location, institution, dates of training, curriculum, and successful completion;

2. Evidence of successful completion of a U.S. Department of Transportation Emergency Medical Technician-Paramedic course and of being currently registered as a paramedic by the National Registry of Emergency Medical Technicians; or, if appropriate,

3. Evidence of successful completion of a U.S. Department of Transportation Emergency Medical Technician-Paramedic course and of current licensure or certification as a paramedic by each state or territory under the jurisdiction of the United States in which the paramedic is currently certified; and

4. Evidence of successful completion of additional training in acquired immunodeficiency syndrome and determination of death as required by Kentucky statutes and administrative regulations.

(b) Submit the fee required by 202 KAR 7:491.

(2) Upon receipt of an application by a person licensed or certified in another state or territory under the jurisdiction of the United States or registered as a paramedic by the National Registry of Emergency Medical Technicians, the board shall verify all of the information required by law and if the applicant meets all of the requirements to become a paramedic in Kentucky, shall issue the paramedic a Kentucky paramedic license. If the applicant does not meet all of the requirements to become a paramedic licensed in Kentucky the board shall inform the applicant of the deficiencies, whether the deficiencies are correctable, how to correct the deficiencies if applicable, and how an adverse decision of the board may be appealed.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507. Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary licenses.

(b) The necessity of this administrative regulation: establishes procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes procedures for licensing of paramedics from other states; graduate paramedics and issuance of temporary licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: establishes the procedures for licensing of paramedic from other states; graduate paramedics and issuance of temporary licenses.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: unknown.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all individuals equally.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:461E

This emergency administrative regulation establishes scope of practice matters relating to paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by

an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:461 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:461E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:461E. Scope of practice matters.

RELATES TO: KRS 311.652 to 311.658, 311.990(21)

STATUTORY AUTHORITY: KRS 311.654

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654

directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish the scope of practice matters.

Section 1. Permitted Skills, Procedures. (1) Unless limited by the paramedic's medical director or employer, or by disciplinary action of the board, a paramedic may perform any skill or procedure specified in the 1998 paramedic training curriculum of the U.S. Department of Transportation;

(2) A restriction on the performance of a skill or procedure or the administration of medication or other action by a paramedic shall be in writing and signed by the paramedic's employer or medical director, or the executive director of the board, as appropriate.

Section 2. State-wide Permissive Protocols. The board shall adopt, by administrative regulation, state-wide protocols that may be adopted by any medical director in the state. A medical director adopting a state-wide protocol shall notify the board in writing of its adoption and shall not be required to submit a local protocol covering that matter.

Section 3. Local Protocols. The medical director of each paramedic, with the approval of the paramedic's employer, shall adopt local protocols covering skills, procedures, administration of medication, and other matters relating to paramedics under their direction. A copy of each protocol adopted shall be filed with the board and shall be a public record. All local protocols shall meet or exceed the standards of the state-wide protocols.

Section 4. Upgrading to Current Authorized Paramedic Skills. A paramedic trained prior to the introduction of the 1998 U.S. Department of Transportation Paramedic curriculum shall not perform any procedure, skill, or administer any medication contained in that curriculum unless the paramedic is specifically trained in the performance of that skill or procedure or medication administration and that the training is certified in writing by the paramedic's medical director and that the paramedic is authorized in writing by the paramedic's medical director to perform the skill or procedure or administer the medication.

Section 5. Additional Permitted Skills and Procedures. (1) The board may permit a paramedic to perform skills and procedures or medication administration which are in addition to those authorized in paramedic curriculum of the U.S. Department of Transportation provided that the skills and procedures are specified by administrative regulation and are consistent with the provisions of KRS 311.658.

(2) When the board adopts a new skill, procedure or medication the board shall do so by administrative regulation which contains a description of the skill, procedure, or medication, training requirements, and reporting requirements.

(3) No paramedic shall perform a new skill, procedure, or administer a new medication adopted by administrative regulation of the board until the paramedic's medical director certifies in writing to the board and to the employer that the paramedic has successfully completed the required training and is authorized to perform the new skill, procedure, or administer the new medication.

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Section 6. Adherence to Protocols. (1) A paramedic shall adhere to the protocols issued by the paramedic's medical director or board protocols adopted by the paramedic's medical director unless the medical director or on-line medical control orders otherwise, or compliance would not be in the medical best interest of the patient or the paramedic does not have the equipment or medication, or other condition precluded the use of the protocol.

(2) The paramedic shall document deviation from a protocol on the ambulance run form or the patient care documents accompanying the ambulance run form.

(3) The medical director and employer shall counsel with a paramedic who is not documenting deviation from protocols, or is deviating from protocols to excess, and may report this deviation to the board for action.

Section 7. Paramedic May Use Skills Anywhere in State, Limitations. (1) A paramedic may use paramedic procedures, skills, and medication at any location within the Commonwealth, provided:

(a) The paramedic has the written consent of the paramedic's medical director;

(b) The paramedic has the written consent of the paramedic's employer;

(c) The paramedic has the equipment and medication necessary to perform a skill which a paramedic is authorized to perform; and

(d) Unless prohibited by the ambulance service which is to transport the patient, the paramedic continues treatment of the patient until the patient is accepted by the receiving hospital or advanced life support provider.

(2) The employer of a paramedic may limit or prohibit a paramedic from providing service outside of the area specified by the employer or limit a paramedic from utilizing the equipment, supplies, or medication, or combination thereof, owned by the employer. An employer shall not prohibit a paramedic from being employed by another employer.

(3) The medical director of a paramedic may limit or prohibit a paramedic from providing services outside of the area served by the employer for which a medical director serves. A medical director shall not prohibit a paramedic from serving under another medical director.

(4) The medical director of a paramedic who is employed by or under contract to the medical director may utilize their paramedic services, skills, or medications as specified by the medical director by protocol or direct order. A medical director shall not prohibit a paramedic from serving under another medical director.

(5) The board shall not discipline an employer or a medical director restricting a paramedic from outside employment or from working under the supervision of another medical director.

Section 8. Performance of Skills, Procedures, and Administration of Medication by Paramedic Student. (1) During the didactic, laboratory, and clinical portions of a paramedic course a paramedic student may perform any skill, procedure, or administer any medication which a paramedic may, subject to being permitted to do so in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill, procedure, or administer any medication which a paramedic may, subject to being permitted to do so in writing by the medical director of the paramedic course which is concurred within by the medical director of the ambulance service at which the paramedic student is doing a field internship.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for scope of practice matters for paramedics.

(b) The necessity of this administrative regulation: establishes requirements for scope of practice matters for paramedics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for scope of practice matters for paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements for scope of practice for paramedics.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all paramedics equally.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY 202 KAR 7:465E

This emergency administrative regulation establishes requirements to be a medical director as it relates to paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:465 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:465E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson



KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)

202 KAR 7:465E. Medical director for an advanced life support ambulance service or other organization providing advanced life support.

RELATES TO: KRS 311.652 to 311.658  
STATUTORY AUTHORITY: KRS 311.654  
EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.654 directs the Kentucky Board of Emergency Medical Services to adopt rules and administrative regulations relating to paramedics. The function of this administrative regulation is to establish requirements for a medical director for an advanced life support ambulance service or other organization providing advanced life support.

Section 1. General Requirements. A person serving as a medical director for paramedics of an ambulance service shall:

- (1) Be a physician licensed by the KBML;
- (2) Evidence shall be on file with the Kentucky Board of Emergency Medical Services to verify that the qualifications of the medical director have been met;
- (3) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support;
- (4) Participate and oversee quality assurance of runs, training and practice of BLS or ALS skills; and
- (5) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 2. Application Requirements. A person desiring to serve as a medical director for paramedics of an ambulance service providing advanced life support or other organization providing advanced life support of for the medical director shall submit an application to the board containing:

- (1) Name;
- (2) Address;
- (3) Telephone numbers;
- (4) Educational training;
- (5) Medical training;
- (6) A copy of their medical license;
- (7) A list of employers of paramedics with which they have a contract or agreement to supervise paramedics.

Section 3. Duties of the Medical Director. (1) Mandatory duties:

- (a) Protect the public health and safety with regard to paramedics, emergency medical technicians-basic, emergency medical technicians-first responder, ambulance services or other advanced life support provider which they serve, or is the employer or direct supervisor;
  - (b) Control and monitor the procurement, storage, use, and return of drugs and medications under their control;
  - (c) Maintain written or electronic records on each paramedic supervised including, but not limited to:
    1. Chart review results;
    2. Remediation needed by the paramedic and the outcome thereof;
    3. Limitation of practice by the paramedic, other than by protocol;
    4. Discipline of the paramedic; and
    5. Dates of supervision of the paramedic.
  - (d) Notify the board in writing of disciplinary violations relating to restriction of the paramedic's practice, for practice or skill deficiencies by paramedics and other persons subject to the jurisdiction of the board which they supervise;
  - (e) Notify the board in writing, within three (3) working days of the acceptance of a paramedic for supervision or the deletion of a paramedic from the list of persons they serve as medical director;
  - (f) Notify the board, in writing, within three (3) working days of their employment, contract, termination, or resignation as medical director.
- (2) Permitted duties:
- (a) Any duty specified by written contract or agreement with the

medical director's employer.

(b) When the medical director is the employer of the paramedic or the paramedic does not work for another employer, assure that the paramedic under their direction is performing in accordance with applicable statutes, administrative regulations, and the medical director's protocols and directions.

(3) Duty of medical director upon discipline by the Kentucky Board of Medical Licensure. A medical director who has been subjected to discipline by the Kentucky Board of Medical Licensure shall report the discipline within three (3) working days to the board and if the medical director's license to practice medicine has been suspended, limited, or revoked, shall resign as medical director until their license to practice medicine is fully restored.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for medical director of an advanced life support ambulance service.

(b) The necessity of this administrative regulation: establishes requirements for a medical director of an advanced life support ambulance service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes requirements for a medical director of an advanced life support ambulance service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: identifies the requirements for a medical director of an advanced life support ambulance service.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 ALS ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: establishes requirements for medical director of an advanced life support ambulance service.

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation treats all individuals equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local gov-

ernment? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### STATEMENT OF EMERGENCY 202 KAR 7:491E

This emergency administrative regulation establishes a fee schedule as it relates to paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:491 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:491E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:491E. Establishes a fee schedule.

RELATES TO: KRS 311.652 to 311.669, 311.990(21)

STATUTORY AUTHORITY: KRS 311.654, 311.656

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.656 directs the Board of Emergency Medical Services to prescribe a schedule of fees and charges for examinations for the issuance of licenses and for the renewal of licenses for paramedics.

Section 1. Fees. The following schedule of fees is established pursuant to KRS 311.656:

(1) Certification examination application fee: ten (10) dollars;

(2) Certification examination fee, including National Registry of Emergency Medical Technicians examination fee: \$125;

(3) Recertification fee: twenty-five (25) dollars;

(4) Fee for duplicate certificate: ten (10) dollars;

(5) Licensure examination retest fee, including National Registry of Emergency Medical Technicians retesting fee: sixty (60) dollars;

(6) Certification application late penalty: twenty-five (25) dollars;

(7) Recertification application late penalty: twenty-five (25) dollars.

MARK K. BAILEY, Chairperson  
APPROVED BY AGENCY: February 13, 2001  
FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes a fee schedule.

(b) The necessity of this administrative regulation: establishes a fee schedule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: establishes a fee schedule.

(d) How this administrative regulation currently assists or will as-

sist in the effective administration of the statutes: establishes a fee schedule.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(a) Initially: 0

(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 0

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation applies the same fee to all.

#### 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? ues

2. State what unit, part or division of local government this administrative regulation will affect. Any local government that administers paramedic services.

3. State the aspect or service of local government to which this administrative regulation relates. It sets a fee schedule for paramedics who may be employed by local governments that administer paramedic 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 to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): unknown

Expenditures (+/-): Payment of fees if local governments incur such fees as part of its services.

Other Explanation: Any additional administrative cost resulting from compliance with administrative regulations. Amount unknown.

#### STATEMENT OF EMERGENCY 202 KAR 7:493E

This emergency administrative regulation establishes requirements for the discontinuance of resuscitation by a paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:493 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:493E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

## VOLUME 27, NUMBER 9 – MARCH 1, 2001

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:493E. Discontinuance of resuscitation by a paramedic.

RELATES TO: KRS 72.020, 216B.410, 311.660, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations to establish a protocol governing the discontinuance of a resuscitation efforts by a paramedic. This administrative regulation establishes a protocol for discontinuance of resuscitation by a paramedic.

Section 1. A paramedic may discontinue resuscitation if:

- (1) The patient has suffered cardiac arrest prior to arrival at the hospital;
- (2) The paramedic has attempted and documented the resuscitative efforts specified in the applicable resuscitation protocol of the ambulance service medical director;
- (3) The resuscitative efforts were unsuccessful; and
- (4) The patient meets the criteria established in 202 KAR 7:420, Section 2.

Section 2. A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:

- (1) The patient has suffered cardiac arrest;
- (2) The resuscitative efforts specified in the applicable resuscitation protocol of the ambulance service medical director have been performed and documented;
- (3) The resuscitative efforts were unsuccessful; and
- (4) The patient meets the criteria established in 202 KAR 7:420, Section 2.

Section 3. The paramedic shall contact medical control or a licensed physician, authorized in writing by the medical director, for advice and assistance prior to making a determination required by this administrative regulation. The discontinuation of resuscitation shall be approved by the physician prior to the discontinuance.

Section 4. The paramedic may discontinue resuscitation on a patient meeting the requirements specified in KRS 311.660 if presented with a copy of a standard form of identification authorized in KRS 311.660.

Section 5. The paramedic shall document all items required by this administrative regulation on the ambulance form required by KRS 216B.410.

Section 6. If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and remain on the scene until the arrival of a law enforcement officer or until the paramedic is released from the scene by the coroner.

Section 7. If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the appropriate official whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

Section 8. A paramedic shall not discontinue resuscitation or declare a person dead if the paramedic is:

- (1) Off duty; or
- (2) In a part of the state outside the service area of the paramedic's ambulance service or EMS provider.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001  
FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes a protocol governing the discontinuance of a resuscitation effort by a paramedic.

(b) The necessity of this administrative regulation: Provides for a protocol governing the discontinuance of a resuscitation effort by a paramedic.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.660(1) requires board to promulgate regulations to establish a protocol governing the discontinuance of a resuscitation effort by a paramedic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes a protocol governing the discontinuance of a resuscitation effort by a paramedic.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes a protocol governing the discontinuance of a resuscitation effort by a paramedic.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes protocol governing the discontinuance of a resuscitation effort by a paramedic.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

## VOLUME 27, NUMBER 9 – MARCH 1, 2001

### STATEMENT OF EMERGENCY 202 KAR 7:495E

This emergency administrative regulation establishes requirements for the determination of death by a paramedics. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:495 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:495E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:495E. Determination of death by a paramedic.

RELATES TO: KRS 72.020, 216B.410, 311.660, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660(1) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations to establish a protocol for use by a paramedic in making a determination of death. This administrative regulation establishes a protocol for determination of death by paramedics.

Section 1. If it appears that a person whom a paramedic has been called to attend is dead, the protocol established in Sections 2 through 7 of this administrative regulation shall be followed prior to determining that the person is dead.

Section 2. The paramedic shall determine and document that the following signs of death are present:

- (1) Unresponsiveness;
- (2) Apnea;
- (3) The absence of a palpable pulse at the carotid site;
- (4) Bilaterally fixed and dilated pupils; and
- (5) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph in accordance with the American Heart Association guidelines.

Section 3. The paramedic shall determine, in addition, that one (1) of the following factors or conditions exist:

- (1) Lividity of any degree;
- (2) Rigor mortis of any degree;
- (3) The presence of venous pooling in the body;
- (4) Damage or destruction of the body which is incompatible with life; or
- (5) A standard form or identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311.660.

Section 4. If the paramedic has determined and documented that the conditions of Sections 2 and 3 of this administrative regulation exist, the paramedic may, subject to the provisions of Section 5 of this administrative regulation, declare the patient dead.

Section 5. (1) Except if 202 KAR 7:493 or subsection (2) of this section requires that medical control contact be made, the paramedic may contact medical control or a licensed physician, authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.

(2) Pursuant to KRS 311.660 the medical director of the service may direct, in the service's protocol, that prior to making a determination that a patient is dead that the medical director, or a physician authorized in writing by the medical director, be contacted and that the determination be concurred in by the physician.

Section 6. The paramedic shall document all items required by

this administrative regulation on the ambulance run report form required by KRS 216B.410.

Section 7. If a paramedic determines a patient to be dead, the paramedic shall remain on the scene until the arrival of a law enforcement officer or until the paramedic is released from the scene by the coroner.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for establishing a protocol for use by a paramedic in making a determination of death.

(b) The necessity of this administrative regulation: Provides specific requirements for establishing a protocol for use by a paramedic in making a determination of death.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.660 (1) requires board to promulgate regulations to establish a protocol for use by a paramedic in making a determination of death.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes a protocol for making a determination of death by paramedics.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes requirements for establishing a protocol for use by a paramedic in making a determination of death.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applicable since this regulation establishes protocol governing the determination of death by a paramedic.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**STATEMENT OF EMERGENCY  
202 KAR 7:497E**

This emergency administrative regulation establishes requirements for the training of paramedics in determination of death and preservation of evidence. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:497 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:497E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)**

**202 KAR 7:497E. Training of paramedics in determination of death and preservation of evidence.**

RELATES TO: KRS 72.020, 216B.410, 311.660, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660 requires the Kentucky Board of Emergency Medical Services to promulgate an administrative regulation establishing the in-service training requirements for a paramedic relating to determination of death and preservation of evidence. This administrative regulation establishes the training program requirements for a paramedic.

Section 1. The training program shall not be less than three (3) hours in length and shall include at least the following:

- (1) Information on and a copy of KRS 311.660;
- (2) Information on and a copy of 202 KAR 7:495;
- (3) Information on and a copy of 202 KAR 7:493;
- (4) Information on and a copy of KRS 72.020;
- (5) Information on and a copy of KRS 311.660;
- (6) Information on the duties of and role of the coroner and state medical examiner; and
- (7) Information on preservation of evidence; and at the scene of a death.

Section 2. (1) Except as provided in Section 4 of this administrative regulation, the training shall be:

- (a) Provided as part of an approved paramedic training course; or
- (b) Conducted under the supervision of the medical director or supervising physician of an EMS provider or ambulance service for whom the paramedic works.

(2) The paramedic training course instructor or the medical director providing the training shall certify that the training has been conducted in accordance with the requirements of this administrative regulation.

Section 3. The medical director of the ambulance service or EMS provider providing the training shall invite the coroner of the county in which the training is conducted to attend the training and assist in the instruction.

Section 4. A paramedic may, with the written approval of the medical director of the ambulance or EMS service for which the paramedic works, attend the training specified in this administrative regula-

tion at any location in this Commonwealth where the training is being conducted.

Section 5. An instructor or medical director conducting training under this administrative regulation shall make a written report to the board containing the names of all paramedics who successfully complete the training. The report shall be sent to the board within twenty (20) working days after the conclusion of the training.

Section 6. Pursuant to KRS 311.660, a paramedic course taught in Kentucky shall include a course of instruction that complies with the requirements established in this administrative regulation.

Section 7. Pursuant to KRS 311.660, a paramedic seeking recensure shall successfully complete the training required by this administrative regulation within ninety (90) days of certification by the board.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moliney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the continuing education requirements for a paramedic relating to determination of death and preservation of evidence.

(b) The necessity of this administrative regulation: Establishes the continuing education requirements for a paramedic relating to determination of death and preservation of evidence.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.660 requires board to promulgate regulations to establish the continuing education requirements for a paramedic relating to determination of death and preservation of evidence.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes the continuing education requirements for a paramedic relating to determination of death and preservation of evidence.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1429 paramedics

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes the continuing education requirements for a paramedic relating to determination of death and preservation of evidence.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering is not applicable since this

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regulation establishes protocol governing the continuing education requirements for determination of death by a paramedic.

### 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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

### STATEMENT OF EMERGENCY 202 KAR 7:520E

This emergency administrative regulation establishes requirements for the allocation of funding assistance for purchasing ambulances and equipment for emergency medical services. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:520 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:520E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

**202 KAR 7:520E. Allocation of funding assistance for purchase of ambulances and equipment for emergency medical services.**

RELATES TO: KRS 311.6563

STATUTORY AUTHORITY: KRS 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6563 authorizes the Kentucky Board of Emergency Medical Services to maintain a program for the purpose of assisting units of local government in the purchases of ambulances and equipment, provision of an adequate number of trained emergency medical services personnel, and provision of education for personnel. This administrative regulation establishes standards and criteria governing the allocation of funding assistance to eligible applicants for the purchase of ambulances and equipment and the provision of funding for personnel and training.

Section 1. Definitions. (1) "Ambulance" means a vehicle as defined in KRS 311.6521.

(2) "Ambulance service" means a service licensed by the board to provide emergency health care ground transportation services which meets the requirements of 202 KAR 20:117, Section 2 through 8, and which is operated by the applicant or under contract with a nonprofit corporation to the applicant.

(3) "Applicant" means an entity specified in KRS 311.6563.

(4) "Board" means the Kentucky Board of Emergency Medical Services.

(5) "EMS" means emergency medical services.

(6) "EMS matching fund" means funds appropriated by the General Assembly to carry out the provisions of KRS 311.6563.

(7) "Local funds" means funds locally generated revenue excluding EMS matching funds awarded by the board.

Section 2. Application for Funding Assistance. (1) An applicant may apply to the board for funding assistance toward the purchase of an ambulance or equipment to be used solely by an ambulance service pursuant to KRS 311.6563.

(2) The application shall include:

(a) A description of the item for which funding is requested;

(b) The cost of the item requested;

(c) The justification for each ambulance or item of equipment for which funding assistance is requested;

(d) A sworn statement that information on the application is truthful; and

(e) A notarized signature of the applicant and the county judge executive or mayor of an urban county government.

(3) The applicant shall use the application form provided by the board.

Section 3. Funding Criteria. (1) The maximum amount of EMS matching fund which a county, including cities, or ambulance taxing districts within a county, may receive is established in KRS 311.6563.

(2) To qualify for funds from the EMS matching fund program, an applicant shall:

(a) Match funding assistance from the EMS matching fund with at least fifty (50) percent local funds;

(b) Provide written assurance that the ambulances and equipment purchased with assistance from the EMS matching fund shall be used solely for the purposes permitted in KRS 311.6563 and this administrative regulation;

(c) Submit to the board documentation of actual expenditures from the EMS matching fund;

(d) Agree to refund to the board EMS matching fund which:

1. Remain unexpended one (1) year from the date of the award; or

2. Were not utilized for the approved purpose; and

(e) Agree that no further funding shall be approved by the board until recordkeeping requirements have been complied with in full and that if recordkeeping requirements have not been complied with in full during any fiscal year that no further application from the applicant shall be approved during that fiscal year.

(3) Ambulances purchased pursuant to this administrative regulation shall meet the requirements of 202 KAR 20:117 relating to ground ambulance services.

(4) Equipment eligible for reimbursement shall be:

(a) Monitor/defibrillator;

(b) Automatic external defibrillator; and

(c) Ambulance cot.

Section 4.—Title, Use, and Disposition of Ambulances and Equipment. (1) Legal title to an ambulance and equipment purchased pursuant to this administrative regulation shall vest in the applicant and not in any organization contracting with the applicant.

(2) The applicant shall:

(a) Maintain property records for each ambulance and item of equipment purchased with EMS matching funds; and

(b) Notify the board in writing of any changes in the intended use or current status of the ambulance or equipment.

(3) The applicant shall obtain prior written approval from the board to dispose of an ambulance or item of equipment purchased with EMS matching fund assistance having a residual value of at least \$500.

Section 5. Allocation of Funds. (1) Allocation of funds for ambulances and equipment shall be based on the following criteria:

(a) There shall be no priorities for the funding of ambulances; however ambulances shall be funded only for the following categories of applicants:

1. Applicants which demonstrate need for replacement of an ambulance to maintain ambulance services which:

a. Is totally inoperable;

b. Is at least seven (7) years old;

c. Is driven in excess of 70,000 miles if it has gasoline engine and is in poor condition; or

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d. Is driven in excess of 100,000 miles if it has a diesel engine and in poor condition; and

2. Applicants in need of new ambulances to establish an essential ambulance service where none exists to cover the proposed service area.

3. Applicants which document the need for additional ambulances to provide adequate coverage within the designated service area.

4. Applicants in which a new ambulance service is being established to fulfill a documented need for additional service.

(b) Equipment funding shall not be based on priority.

(2) A county shall not receive more than \$10,000 per year in EMS matching funds for equipment, regardless of the number of applicants from the county.

Section 6. Fund Management and Scheduling - Block Grant Funds. (1) Each fiscal year ten (10) percent of the available funds or \$150,000, whichever is greater, shall be retained for emergency replacement of ambulances and essential equipment.

(2) During the first fiscal year of each biennium ambulances or equipment, or both, may be requested and funded.

(a) During the first fiscal year of each biennium applications for funding of ambulances or equipment, or both, may be filed at any time and awards may be made by the board at any time during the fiscal year.

(b) Funds remaining unexpended at the end of the first year of the biennium shall not lapse and shall be held for distribution during the second year of the biennium.

(3) During the second fiscal year of each biennium ambulances or equipment, or both, may be requested and funded.

(a) During the second fiscal year of each biennium requests for funding of ambulances shall be received by the board not later than February 1. Grant awards for ambulances shall be made by the board no later than April 1.

(b) During the second fiscal year of each biennium requests for funding of equipment shall be received by the board not later than February 15. Grant awards for equipment shall be made by the board no later than April 15.

(4) During the second fiscal year of the biennium applicants may request block grant funding. Subject to the withholding specified in subsection (1) of this section, block grant funds shall consist of monies remaining in the fund during the second fiscal year of each biennium following the distribution of ambulance and equipment funds for that fiscal year.

(5) Block grant funds shall be matched on an equal basis by local funds and may be expended for any purpose authorized in KRS 311.6563.

(6) Two (2) types of block grant funding shall be utilized:

(a) Two-thirds (2/3) of the available block grant funds shall be available to applicants in any county.

(b) One-third (1/3) of the available funds shall be available only to applicants in counties not containing a city of the first class, urban county government, or city of the second class. Applicants in a county not containing a city of the first class, urban county government, or city of the second class may also apply for funding pursuant to paragraph (a) of this subsection.

(c) Block grant funds awarded shall be divided equally by the number of counties in each category which apply for funds. The funds awarded to any county under any combination of funding programs under this administrative regulation not exceed the maximum amount allowed by KRS 311.6563.

(7) Applicants for block grant funds, from both categories of county shall submit applications to the board no later than March 1 of the second year of each biennium. The board shall award the funds no later than June 1 of that year.

(8) If there is more than one (1) applicant for block grant funds from a county, the board shall divide the county's award equally among the applicants from that county.

(9) The application shall contain the notarized signatures of the applicant and the county judge executive or mayor of an urban county government.

(10) The request for funding shall be submitted on the Application for Block Grant Funds issued by the board.

Section 7. Emergency Funding of Ambulances or Equipment, or Both. (1) A request for emergency funding of an ambulance, equipment, or both, may be made to the board at any time using the ambulance and equipment grant funding application.

(2) The application identified in subsection (2) of this section shall detail the nature of the emergency and the reasons why funding is requested.

(3) The board shall utilize the \$150,000 reserve fund for the funding of requests for emergency funding of ambulances, equipment, or both.

(4) The board shall give preference to the replacement of equipment which has been damaged beyond repair and which is essential to the maintenance of ambulance service in the county.

(5) Any funding authorized pursuant to this section shall be subject to the maximum yearly funding allowed for each county pursuant to KRS 311.6563. In calculating funding under this section, the board shall count all funding from the board received by the county in the fiscal year during which the application for emergency funding is made.

Section 8. Discretion of the Board. (1) The filing of an application for funding for ambulances, equipment, or both, or for block grant funds creates no obligation on the board to grant the funding requested, or if a grant is made, the amount of funding requested. The board may, in its sole discretion, reduce but not increase the amount of funding requested.

(2) The awarding, reduction, or denial of grant applications under KRS 311.6563 and this administrative regulation is within the sole discretion of the board.

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

(a) Ambulance and Equipment Grant Funding Application; and

(b) Application for Block Grant Funds.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for allocation of funding assistance for purchasing ambulances and equipment for emergency medical services.

(b) The necessity of this administrative regulation: To distribute grant money.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6563 provides matching funds to assist local units of government to purchase ambulances and equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides mechanism for local units of government to become eligible to receive matching funds to purchase ambulances and equipment.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organiza-



tions, or state and local governments affected by this administrative regulation: Local governments that provide ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Allows units of local governments to receive matching funds to purchase ambulances and equipment.

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

(a) Initially: No additional costs anticipated.

(b) On a continuing basis: No additional costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General operating budget for office of KBEMS.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

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

(9) TIERING: Is tiering applied? Yes, funds are available only to ambulance services run by local government, not by private entities.

#### 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. Any local government that applies for the grants and receives an allocation of funding assistance for purchase of ambulances and/or equipment for emergency medical services.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that applies for the grants and receives an allocation of funding assistance for purchase of ambulances and/or equipment for emergency medical 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 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 (+/-): Up to \$25,000.00

Expenditures (+/-): Unknown

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

#### STATEMENT OF EMERGENCY 202 KAR 7:570E

This emergency administrative regulation establishes license procedures and fee schedule for ambulance providers. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:570 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:570E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

202 KAR 7:570E. License procedures and fee schedule for ambulance providers.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6524

requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers. This administrative regulation provides specific requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Advanced life support (ALS)" means certified and licensed emergency medical professionals who provide prehospital medical care such as:

(a) Basic life support services;

(b) Advanced airway management such as endotracheal intubation;

(c) Defibrillation; and

(d) Administration of intravenous fluids and pharmaceuticals under the authority of a physician medical director.

(2) "Ambulance service" means an ambulance provider as defined in KRS 311.6521(2).

(3) "Basic life support" (BLS) means certified or licensed emergency medical personnel who provide prehospital medical care such as:

(a) First aid;

(b) Cardiopulmonary resuscitation;

(c) Airway management;

(d) Cervical spine control;

(e) Breathing assistance;

(f) Hemorrhage control; and

(g) Basic patient movement procedures.

(4) "Licensing agency" means the Kentucky Board of Emergency Medical Services.

Section 2. Licenses. (1) A Class I, Class II, or Class III ground ambulance service shall not be established in Kentucky without first obtaining a certificate of need, except as provided in Section 5 of this administrative regulation, and shall not operate a Class I, Class II, Class III, or air ambulance service without first obtaining a Kentucky Ambulance License, Form EMS-2 (6/96), incorporated by reference, from the licensing agency.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) An ambulance provider shall file a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (6/96) with the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621.

(4) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 202 KAR Chapter 7.

(5) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency, unless otherwise exempted by statute:

(6) The licensee shall maintain and submit completed reports required by:

(a) KRS 311.6524;

(b) 202 KAR 7:580, Section 3(2)(a);

(c) 202 KAR 7:582, Section 3(2)(a);

(d) 202 KAR 7:584; or

(e) 202 KAR 7:590, Section 10; and

(f) The licensing agency.

(7) A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(8) A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(9) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(10) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(11) Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period.

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(12) There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

- (a) Each person having direct or indirect ownership interest of ten (10) percent or more in the service;
- (b) Officers and directors of the corporation, if a service is organized as a corporation; and
- (c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1)(a) Compliance with licensing administrative regulations may be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(b) On-site inspections may be conducted annually if any deficiencies were found during an inspection, and biannually if no deficiencies were found during the past two (2) years involving critical equipment, policy and documentation as established by the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of deficiencies.

(b) The plan shall specify the date, method, or equipment which shall be used to correct each deficiency cited.

(5)(a) Following a review of the plan, the licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify in writing the reasons for the unacceptability. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and relicensing inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a provider which:

- (a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;
- (b) Fails to eliminate or correct regulatory violations;
- (c) Falsifies an application for licensing;
- (d) Tampers with, alters, or changes a license issued by the licensing agency;
- (e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;
- (f) Provides false or misleading advertising;
- (g) Falsifies, or causes to be falsified, a patient record or ambulance run report;
- (h) Provides an unauthorized level of service;
- (i) Has a history of staff violations which have resulted in disciplinary action under 202 KAR 13:090;
- (j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under KRS 311.652 to 311.669.

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency or its authorized representative may issue an order directing a provider to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

- (a) Fraud or misrepresentation; or
- (b) Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modifica-

tion, or suspension of a license.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

- (1) Nonvolunteer ambulance providers: eighty (80) dollars;
- (2) Volunteer ambulance providers in which a majority of the ambulance runs are made by attendants who do not receive compensation for their work: twenty (20) dollars.

Section 5. Licensing Without a Certificate of Need. (1) A person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:050, Section 12, may be granted a temporary license to operate an ambulance service in Kentucky pending the approval or disapproval of an application for a certificate of need. The temporary license shall expire forty-five (45) days after notice of approval of the certificate of need or thirty (30) days after notice of disapproval of certificate of need.

(2) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(7) may be licensed in accordance with the provisions of this administrative regulation without a certificate of need as if they had a certificate of need.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Kentucky Ambulance License, Form EMS-2 (6/96).
- (b) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (6/96).

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes license procedures and fee schedule for ambulance providers.

(b) The necessity of this administrative regulation: Provides specific requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524 requires board to promulgate regulations for licensing, inspecting, and regulating ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 public services that are recipients of funding.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies re-

quirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? No tiering was applied because equal treatment is given to all ambulance providers.

#### 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. Any local government that provides or administers ambulance services.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that provides or administers ambulance 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 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 (+/-): None

Expenditures (+/-): Payment of appropriate fee(s)

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

#### STATEMENT OF EMERGENCY 202 KAR 7:580E

This emergency administrative regulation establishes minimum licensing requirements for Class I ground ambulance providers. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:580 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:580E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

##### 202 KAR 7:580E. Class I ground ambulance providers.

RELATES TO: KRS 311.652 to 311.658, 311.990

STATUTORY AUTHORITY: KRS 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6526 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. The function of this administrative regulation is to provide minimum licensing requirements for Class I ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a Class I ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital medical care such as:

1. Basic life support services (BLS);  
2. Advanced airway management such as endotracheal intubation;

3. Defibrillation;

4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the board to provide health care and transportation on an emergency basis.

(2) "Ambulance" means a vehicle as defined in KRS 311.6521(1) which is permitted by the board to be a principle vehicle to be utilized by an ambulance provider for the provision of:

(a) Emergency care and transportation; or

(b) Nonemergency patient transportation without the use of red lights and sirens.

(3) "Base station" means the primary physical location of the ambulance service that includes the administrative offices, telephone communications, vehicles and the required supporting documentation of the service.

(4) "Basic life support (BLS)" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;

2. Cardiopulmonary resuscitation;

3. Airway management;

4. Cervical spine control;

5. Breathing assistance;

6. Hemorrhage control; and

7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7 and 8 of this administrative regulation, if applicable, of this administrative regulation and is licensed by the board to provide health care and transportation on an emergency basis.

(5) "Call received time" means the time the notification is made by dispatch of an emergency or potential emergency and the need for the emergency ambulance service to physically respond.

(6) "Continuing education" means the provision of information, education, or training.

(7) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(8) "Deficiency" means a violation that was found, by a board representative, when a service failed to comply with this administrative regulation and 202 KAR 7:040.

(9) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance service for direction to the patient scene.

(10) "Emergency" means services provided after the sudden onset of a medical condition or injury manifesting itself by acute symptoms of such severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

(11) "Emergency medical technician-basic (EMT-B)" means a person certified pursuant to 202 KAR 7:080 through 202 KAR 7:110.

(12) "Emergency medical technician-first responder" means a person certified pursuant to 202 KAR 7:080.

(13) "Employee" means a person who may be paid or volunteer, full time or part time and has been approved by the administrator of the ambulance service to work within their qualifications and have documentation required by this administrative regulation.

(14) "Interfacility care" means BLS or ALS emergency or non-emergency medical care provided to a patient during ambulance transportation between two (2) health care facilities.

(15) "Licensing agency" means the Kentucky Board of Emergency

Medical Services.

(16) "Paramedic (EMT-P)" means a person licensed pursuant to 202 KAR 7:401.

(17) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(18) "Provider" means a Class I ground ambulance provider as defined in KRS 311.6524(1)(b).

(19) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(20) "Satellite" means a physical location where an ambulance is based from on a twenty-four (24) hour basis. The satellite must have an actual street address.

(21) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin, including needles and glass ampules.

(22) "Specialized ground ambulance provider" means a Class I ground ambulance provider which meets the requirements of Section 12 of this administrative regulation and is licensed by the board to provide medical care and transportation on an emergency or scheduled basis that:

- (a) May be unavailable to the general public; and
- (b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:
  - 1. Equipment requirements;
  - 2. Personnel requirements; or
  - 3. Hours of operation.

Section 2. Class I Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class I providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class I, or specialized Class I emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet.

(b) An ambulance provider shall:

- 1. Comply with local, state, and federal statutes and regulations;
- 2. Provide emergency medical services to anyone regardless of race, color, religion, sex, national origin, or age over forty (40).

(c) The license shall be displayed in a prominent place at the service base station. The

following information shall be included on the license:

- 1. Identity and physical location of the base station;
- 2. Number and physical location of satellites, if any, to be operated by the licensee;

3. Designation of the specific geographic area to be served by the licensee, shall conform with the certificate of need issued for the service. The service shall provide with its annual renewal application an accurate map and a written description which delineates the boundaries of the area served by the Class I provider. The provider shall not be precluded from responding to emergency calls outside of its geographic service area if it has been determined that the Class I ground ambulance provider has the closest available unit. When providing:

a. Mutual aid to another ambulance provider or by a written mutual aid agreement with another Kentucky licensed Class I ambulance provider. The following priorities shall be followed for establishing a mutual aid agreement:

(i) A Class I provider which is licensed to serve the same service area; or

(ii) A Class I ground ambulance provider which serves part of the same service area or a contiguous service area;

- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide including BLS or ALS, or specialized BLS or ALS; and

5. Designation of the number of primary ambulances to be operated by the provider.

(d) Each ambulance provider shall provide the licensing agency

with the make, model, year, vehicle identification number and license tag number of each ambulance permitted.

(e) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider including discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider.

(f) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously-approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be notified within twenty-four (24) hours (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement ambulance. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, year, license tag number, and vehicle identification number for both vehicles; and

b. Assurances that the temporary replacement ambulance meets the General Services Administration KKK-A-1822 standard requirements and the requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation; and

3. The licensing agency shall be notified if the replaced unit is back in service.

(g) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class I provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government;

(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence;

(e) A person proceeding to alleviate emergency circumstances pursuant to 202 KAR 7:401, Section 12;

(f) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area; pursuant to KRS 216B.020(7).

(g) An ambulance service licensed in an adjoining state that responds to a mutual aid request for emergency assistance in an unusual circumstance from a Kentucky licensed Class I ground ambulance service if:

- 1. The Kentucky service has insufficient resources to meet the emergency needs; and
- 2. Another ambulance service in Kentucky:
  - a. Is unavailable;
  - b. Has already responded; or
  - c. Is physically unable to reach the incident.

Section 3. Class I Management Requirements. A Class I ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the board, including:

(a) An original, microfilm, electronic equivalent, or similar copy procedure of a run form as authorized in KRS 216B.410 for all runs originating in Kentucky pursuant to the following requirements of subparagraphs 1, 2, 3, and 4 of this paragraph;

1. A Class I provider shall utilize:

a. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), filling in all nonshaded portions of the run report form as appropriate for each patient and each run;

b. A run form developed by the Class I provider that shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Be submitted to the board for review and approval prior to being utilized to ensure consistency with the reporting requirements of KRS 216B.410(1); or

c. An electronic ambulance run reporting system which shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Provide required run form data to the board in a format compatible with the electronic information system requirements of the board. To ensure consistency with the reporting requirements of the board the board shall, upon request by the provider, supply a copy of file layout requirements to the provider.

2. A copy of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age.

(b) Personnel files on each ambulance driver and attendant that shall be maintained as required by KRS 216B.410(8)(a) and (b) for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files that shall, as a minimum, contain evidence of:

1. Current EMT credentials or paramedic licensure with corresponding numbers and expiration dates, or nursing or physician licensure;

2. Current driver's license;

3. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service;

4. Work-related health records which meet the requirements of KRS 216B.410(8).

(3) A written plan to assure that a continuing education program shall be provided for its staff. The program shall include:

(a) Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

(b) A written plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous materials;

(c) A written plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

(d) The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(4) A written plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(5) Ambulance services shall have a written emergency operations plan (EOP) for handling multicassualties incidents and disasters which shall address the following:

(a) Landing zones for helicopters;

(b) Casualty collection sites;

(c) Casualty evacuation sites;

(d) Training for personnel;

(e) Personnel participation in county emergency management disaster exercises;

(f) Personnel who shall respond to the emergency operations center in a disaster.

Section 4. Class I Operating Requirements. (1) A Class I ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system.

(2) If a Class I ground ambulance provider determines he is unable to have an ambulance en route responding within five (5) minutes from the initial emergency call from the dispatch or emergency transfer request from dispatch or facility, the provider shall contact the closest available Class I ground ambulance provider and notify the dispatch center that they are unable to have a ambulance en route to the emergency scene.

(3) A Class I ground ambulance provider may enter into mutual aid agreements with other Kentucky licensed Class I ground ambulance providers on an occasional basis to meet the needs of its service area for providing scheduled nonemergency transportation by contacting the closest available provider to the patient.

(4) If a Class I ground ambulance provider provides nonemergency transfers, the response must be made within sixty (60) minutes or less unless a requesting medical facility approves of a delay that shall not compromise the patient's care. If the sixty (60) minutes time frame cannot be met then the licensee shall have and activate its mutual aid agreement.

(5) A provider who accepts a transfer outside of its service area shall require documentation from the facility or the provider licensed for the service area indicating that a good faith effort was made to utilize the provider licensed for the area.

(6) A Class I ambulance provider shall not refuse an emergency request if a unit is available in the service area. If a Class I ambulance provider also makes nonemergency runs, at least one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee to be used in that area.

(7) In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the Class I ambulance provider shall enter into a mutual aid agreement with the first response organization. These agreements shall be in writing and shall address the following:

(a) The type of mutual aid assistance to be provided including ALS or BLS medical care, ALS or BLS medical first response and extrication;

(b) Response personnel including levels of training and provisions for joint in-service training where appropriate;

(c) Response vehicles including unit identifiers and the station or location from which the vehicles shall be operated;

(d) How and what manner the mutual aid agreement shall be activated including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance provider and the other response agency;

(f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(g) Exchange of patient information, records, and reports; and

(h) Terms of the agreement including effective date and provision for amendment or termination.

(8)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(9) The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(10) Nothing in this administrative regulation shall be construed to

prevent a licensed Class I provider from providing medical first response emergency prehospital care at or below the level for which they are licensed through the utilization of the following:

- (a) Designated, provider owned response vehicles;
- (b) Provider or personally owned supervisor vehicles;
- (c) Employee personally owned vehicles.

(11) The licensed Class I provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

(12) Class I ambulances and medical first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

(13) Vehicles used to provide medical first response services shall be insured by the employee or through the insurance policies of the Class I provider.

(14) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the Federal Communications Commission. Copy(s) of the current Federal Communications Commission license(s) shall be on file in the ambulance services office.

(b) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(c) A Class I ambulance shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(d) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(e) A Class I provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(f) An ambulance provider shall provide orientation to all drivers and attendants related to communication, equipment on vehicle, vehicle fire extinguishers, response, mutual aid, cleaning of equipment, stretcher use, run sheets and other SOPs that have been established by the service.

(15)(a) Nothing in this subsection shall preclude Class I provider personnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (2) chosen by the patient or his physician if the Class I provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which had been approved by the Kentucky Emergency Medical Services Council under KRS 311.952(5), prior to December 28, 2000.

(b) The Kentucky emergency medical service ambulance run report form shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and
2. If the destination was chosen by the:
  - a. Patient;
  - b. Patient's physician; or
  - c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Ground Ambulance Specifications. (1) Ambulances used in the provision of Class I ambulance services shall:

(a) Be maintained in good operating condition and in full repair without obvious problems relating to tires, exhaust, body integrity, warning devices, and mechanical reliability which would be recognized by the average lay person who is not an automotive mechanic;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle. No tire shall display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires when measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire. Retread tires shall not be used on ambulances.

(2) All ground ambulances shall meet or exceed the following minimum physical characteristics:

(a) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(b) The Class I ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(c) A Class I ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(3) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions as determined by a standard automotive testing thermometer;

(b) The air-conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions as determined by a standard automotive testing thermometer.

(4) The name of the ambulance provider shall appear on both sides of the exterior surface of the ambulance. The name shall be the incorporated name or d/b/a as it appears on the Kentucky ambulance license.

(a) The service may request approval from the board to display an abbreviated or shortened version of their name, to serve as a unique identifier.

(b) This requirement shall not preclude a Class 1 provider from adding additional names from another entity on the ambulance due to a joint venture, however the name as licensed by Kentucky EMS shall be the larger, visible and readable by the public.

Section 6: Basic Life Support Personnel. (1) A BLS Class I provider shall be staffed to provide, at least two (2) attendants for each run. One (1) attendant shall remain with the patient, in the patient compartment, at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) The driver on each BLS or ALS ambulance run shall:

(a) Be at least eighteen (18) years of age, with current driver's license;

(b) Have at least two (2) years of licensed driver operator experience;

(c) Complete an initial defensive driving training program that is eight (8) hours long, developed by the ambulance provider or in conjunction with another agency or organization.

1. The training program shall consist of two (2) hours review of driving a vehicle under emergency conditions; and

2. Documentation shall be available to support training in at least the following areas:

a. A two (2) hour review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Performing forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose, for two (2) hours.



c. A two (2) hour review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

d. The refresher defensive driving training program shall be repeated for each driver at least every two (2) years with the course being four (4) hours in duration. One (1) hour for each of the following:

(i) The training program shall consist of one (1) hour review of driving a vehicle under emergency conditions; and

(ii) Review of KRS 189.910 through 189.950 regarding emergency vehicles for one (1) hour; and

(iii) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose for one (1) hour; and

(iv) Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as videotapes, slides, or planned demonstrations for one (1) hour.

(4) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(5) The second ambulance attendant, who may also be the driver, shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT-basic;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(6) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as patient care providers only.

(7) An ambulance provider that has documented a lack of EMT-basics or EMT-first responders available to staff its ambulances may request a waiver on minimum staffing. The waiver request must be accompanied by an acceptable plan to address the shortage of EMTs in the area served by the ambulance provider. If a waiver is approved by the licensing agency, an attendant with drivers training as defined by this section, current CPR and current AIDS certificate can be a second attendant that drives the ambulance. An ambulance so staffed in this manner may only be utilized for making scheduled, nonemergency transfers. The noncertified attendant shall be enrolled in a EMT-first responder or EMT-basic course within three (3) months of the hire date and become certified within six (6) months of enrolling the EMT-first responder or EMT-basic course.

Section 7. Equipment and Supplies. A Class I ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes 6F, 8F, 10F and 14F;

3. Bulb syringe for infant and neonate suction;

(b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir and oxygen tubing with adult and infant size masks (capable of use with oxygen and tubing);

(c) Nasopharyngeal and oropharyngeal airway kits in sizes for adult and children with water soluble lubricant; and

(d) Adult, obese adult, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed oxygen tank size H or M and portable oxygen tank minimum size D, with a filled secured spare portable tank, minimum size D;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier and attachment for use on the fixed oxygen tank;

(d) Transparent nonrebreather oxygen masks for adults and children; and

(e) Nasal cannulas for adults and children.

(3) Bandages and tape.

(a) Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Twenty-five (25) sterile gauze pads, various sizes;

(c) Ten (10) soft roller self-adhering bandages, various sizes;

(d) Four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Five (5) triangular bandages with large safety pins; and

(f) Two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Two (2) eye protector pads and shields or an approved substitute;

(b) Two (2) occlusive dressings;

(c) Shears for bandages;

(d) Hand-held flashlight, two (2) D cell minimum, capable of providing adequate lighting to assess a scene or a patient away from the ambulance;

(e) One (1) penlight;

(f) Two (2) sterile obstetrical kits;

(g) One (1) bottle of activated charcoal (if in suspension, shall have current expiration date);

(h) Sterile irrigation fluids with current expiration date;

(i) Instant glucose with current expiration date;

(j) Cold packs;

(k) Bite stick;

(l) Effective January 1, 2002, an automated external defibrillator (AED) shall be required on all non-ALS ambulances licensed in the state of Kentucky.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the board, for use in EMT training;

(b) Splints for arm, full leg, and foot including padded boards, ladder splints, vacuum splints, or acceptable substitute approved by the board;

(c) Immobilization devices.

1. Short spine board with straps or other acceptable extrication device, in adult size as determined by the board;

2. Adult- and pediatric-size long spine board with straps and cervical immobilization accessories; and

3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the board.

(d) Five (5) rigid, stiff cervical collars in five (5) different sizes including pediatric size;

(e) A CPR board or an acceptable substitute, as determined by the board.

(6) Safety supplies and equipment.

(a) Two (2) five (5) pound size or larger, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver in the driver's compartment or in an outside compartment on the driver's side and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a minimum of three (3) straps for securing the patient, and a mechanism to secure the stretcher while in transit;

(c) One (1) pocket mask with an isolation valve;

(d) One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant and driver;

(e) One (1) acceptable particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;



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- (i) Puncture-resistant containers for disposal of sharp objects;
- (j) Two (2) clean blankets, sheets, pillows, and pillowcases; and
- (k) An emesis container or similar substitute.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the board through the normal waiver process.

Section 8. Extrication and Other Rescue Equipment. (1) A Class I provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

- (a) Two (2) pairs of eye protection goggles;
- (b) Two (2) pairs of heavy work gloves;
- (c) Two (2) hard hats;
- (d) Six (6) reflective triangles or strobes, or equivalent warning devices.

(2)(a) For response to trauma scenes requiring extrication, a ground ambulance provider shall provide one (1) vehicle for the equipment, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

1. Two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;
2. One (1) pair of pliers, vise grip;
3. One (1) wrench, with adjustable, stable open end;
4. One (1) set of screw drivers, four (4) sizes, regular blade;
5. One (1) set of screw drivers, four (4) sizes, Phillips type;
6. One (1) double action tin snip;
7. One (1) crow bar with pinch point;
8. One (1) hacksaw with twelve (12) blades;
9. One (1) hammer, three (3) pound size;
10. One (1) fire axe;
11. One (1) wrecking bar;
12. One (1) bolt cutter, with one and one-fourth (1 1/4) inch jaw opening;
13. One (1) four (4) ton porta-power jack and spreader tool;
14. One (1) shovel, short handle, with pointed blade;
15. One (1) shovel, long handle, with pointed blade;
16. One (1) come-along tool or other acceptable wrenching device; and
17. Two (2) fire proof blankets.

(b) A Class I provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by the board, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 9. Medical Directors. (1) A Class I provider shall have a written agreement with a physician medical director by January 1, 2002. All ALS and BLS services shall have a medical director for use of an AED and prescribed medicine as defined in 202 KAR 7:465, Section 4(1) through (2)(b).

(2) A Class I provider shall provide evidence that the medical director shall:

- (a) Be a physician licensed by the KBML;
- (b) Meet the qualifications specified in 202 KAR 7:465. Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBEMS to assure compliance with said regulation;
- (c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support;
- (d) Participate and oversee quality assurance of runs, training and practice of BLS or ALS skills; and
- (e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 10. Class I ALS Providers. (1) A Class I ALS provider shall meet the requirements of Sections 1 through 9 of this administrative

regulation. It shall also meet the following additional requirements:

(a) Evidence in the form of a letter shall be on file to verify that the ALS written medical protocols have been reviewed by the KBEMS.

(b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision shall be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ALS provider.

(c) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider.

(d) A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this administrative regulation, at the point of patient contact and transportation, a Class I ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

- (a) An endotracheal intubation set consisting of:
  1. Laryngoscope handle;
  2. Straight laryngoscope blades in sizes 0, 1, and 2;
  3. Curved laryngoscope blades in sizes 3 and 4;
  4. Extra batteries and bulbs for handles and blades; and
  5. Seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult and pediatric sizes;
- (b) Stylettes in adult and pediatric sizes;
- (c) Magill forceps in adult and pediatric sizes;
- (d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;
- (e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
- (f) Bite block or substitute;
- (g) A portable monitor defibrillator that:
  1. Is capable of displaying a visual display of cardiac electrical activity;
  2. Is capable of providing a hard copy of cardiac electrical activity measure;
  3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;
  4. Has adult and pediatric external paddle electrodes or pads, capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;
  5. Is capable of being operated from internal rechargeable batteries;
  6. Has synchronized countershock capability for cardioversion;
  7. Has a patient monitoring cable which has the following accessories:
    - a. Electrode paste or gel or equivalent;
    - b. Electrode pads with current date or equivalent for use with the patient monitoring cable; and
    - c. One (1) additional roll of paper for hard copy printout.
  - (h) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;
  - (i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 20cc sizes;
  - (j) Tourniquet appropriate for use with venipuncture procedure;
  - (k) Dextrostix (r) or equivalent for the measure of blood glucose levels;
  - (l) Disposable, individually packaged antiseptic wipes;
  - (m) Intravenous fluids as required by the KBEMS or protocol, macrodrip and microdrip fluid sets, extension sets and accessory items;
  - (n) Intravenous catheter over needle devices in fourteen (14) to twenty-four (24) gauge;
  - (o) Butterfly needles in nineteen (19) and twenty-three (23) gauge;
  - (p) Intraosseous needles;
  - (q) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages; and
  - (r) Meconium aspiration device or equivalent consistent with serv-

ice medical protocols.

(3) A Class I ALS provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 9 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) All drugs must be maintained at a temperature range of fifty-nine (59) degrees Fahrenheit to eighty-six (86) degrees Fahrenheit.

(5) Controlled drugs shall be stored in a locked compartment or equivalent approved by the board. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(6) Nothing in this administrative regulation shall be construed to require a Class I ALS provider to maintain the equipment if the equipment in this section is not required by the medical protocols of the ALS Class I ground ambulance provider.

(7) No ambulance or response vehicle operated by a Class I ground ambulance provider shall be marked with the words "Advanced Life Support", "Paramedic", or similar words which convey essentially the same meaning on its exterior surface visible to the public unless it meets all requirements of this section with regard to equipment, supplies and staffing.

Section 11. Advanced Life Support Personnel. (1) Each permitted Class I ALS ambulance shall be staffed according to the requirements of 202 KAR 7:401.

(2) If medical first response emergency medical service vehicles are utilized by the Class I ALS provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Sections 7, 8, and 10 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 12. Class I Specialized Providers. (1) A Class I provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a Class I specialized provider.

(2) A BLS Class I specialized provider which complies with Sections 1 through 9 of this administrative regulation, if applicable, and an ALS Class I specialized provider which complies with Sections 9 and 10 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the provider which have been approved by the board.

(4) In reference to Section 4(1) of this administrative regulation, a Class I specialized provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(5)(a) of this administrative regulation, a Class I specialized provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 through 9 of this administrative regulation, with certain waivers recommended by the Ground Ambulance and Class 3 Subcommittee and approved by the board.

(7) An ALS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 through 11 of this administrative regulation, with certain waivers recommended by the Ground Ambulance and Class 3 Subcommittee and approved by the board.

Section 13. Request for Waiver. (1) A Class 1 ambulance provider licensed or contemplating licensure under this administrative regulation may request in writing to the board, through the Kentucky Ground Ambulance and Class 3 Subcommittee, that certain provisions of this article be waived.

(2) A request shall justify that a proposed waiver, if approved, shall not jeopardize the quality of patient care.

(3) The Kentucky Ground Ambulance and Class 3 Subcommittee may recommend approval of a request based on at least one (1) of the following:

(a) Circumstances where public health and safety is a factor;

(b) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of emergency medical services;

(c) Substitution of equipment authorized by this article; or

(d) Testing of new procedures, techniques, and equipment in a pilot study authorized by the Kentucky Ground Ambulance and Class 3 Subcommittee and supervised by the designee of Kentucky Ground Ambulance and Class 3 Subcommittee.

(4) The licensing agency in consultation with the Kentucky Ground Ambulance and Class 3 Subcommittee shall establish time limits and conditions on all approved waivers.

(5) The licensing agency in consultation with the Kentucky Ground Ambulance and Class 3 Subcommittee shall review each approved waiver annually and either continue or revoke each approved waiver.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);

(b) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406; and

(c) Kentucky Board of Emergency Medical Services Form No. 1.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides minimum licensing requirements for Class I ground ambulance providers.

(b) The necessity of this administrative regulation: Provide minimum licensing requirements for Class I ground ambulance providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524(1)(b) requires board to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides minimum licensing requirements for Class I ground ambulance providers.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It provides the minimum licensing requirements for Class I ground ambulance providers.

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

(a) Initially: N/A

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(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not applied because all Class I ground ambulance services are treated equally.

### 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. Any local government that administers Class I ground ambulance providers.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that administers Class I ground ambulance providers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

### STATEMENT OF EMERGENCY 202 KAR 7:582E

This emergency administrative regulation provides for the minimum licensing requirements for Class II ground ambulance providers. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:582 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:582E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

#### 202 KAR 7:582E. Class II ground ambulance providers.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6524(1) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers. This administrative regulation provides for the minimum licensing requirements for Class II ground ambulance providers.

Section 1. Definitions. (1) "Basic life support (BLS)" means an ambulance provider which:

(a) Utilizes at least two (2) emergency medical personnel who are certified or licensed to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;

6. Hemorrhage control; and

7. Basic patient movement procedures;

(b) Meets the requirements established in Sections 1 through 6 of this administrative regulation; and

(c) Is licensed by the board to provide basic life support treatment and transportation on a scheduled basis.

(2) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(3) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(4) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance.

(5) "Emergency medical technician (EMT)" means a person certified pursuant to 202 KAR 7:010.

(6) "Emergency medical technician-first responder" means a person certified pursuant to 202 KAR 7:110.

(7) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(8) "Interfacility care" means BLS nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(9) "Licensing agency" means the Kentucky Board of Emergency Medical Services.

(10) "Provider" means a Class II ground ambulance provider as defined in KRS 311.6524(1)(L).

#### Section 2. Class II Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class II ground ambulance providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class II medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the board. An ambulance provider which falls under the provisions of KRS 311.652 to 311.658 may apply for a license from the board without first obtaining an additional certificate of need;

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;

2. Number and location of substations, if any, to be operated by the licensee;

3. Designation of the specific geographic area to be served by the licensee. The provider shall not be precluded from responding to calls outside of its geographic service area when providing:

a. Mutual aid;

b. Disaster assistance;

c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area; and

4. Designation of the number of ambulances to be operated by the provider;

(d) Each Class II ambulance licensed shall be staffed and equipped according to the requirements of this administrative regulation.

(e) Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(f) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase

in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, of the disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(g) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone or telefax of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary replacement ambulance meets the requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. The licensing agency shall be notified if the replaced unit is back in service.

(h) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class II provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; and

(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to the state of residence.

**Section 3. Class II Management Requirements.** A Class II ground ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of:

(a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the board, including:

(a) An original, microfilm, electronic equivalent as authorized under KRS 216B.410(1), or similar copy procedure of EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report", for all runs originating in Kentucky.

1. Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

2. The third copy of the run form, or an electronic equivalent, shall be forwarded to the board within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retire-

ment from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files shall contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, EMT certification or paramedic licensure with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service;

6. Health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous materials;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Ambulance response;

5. Transport limitations; and

6. Patient destination.

**Section 4. Class II Operating Requirements.** (1) A Class II ambulance provider shall provide transportation on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed ambulance provider.

(2) For the purpose of assisting the Class II provider in situations where the medical needs of the patient exceed the scope and authority of a Class II provider, the Class II provider shall have a mutual aid agreement with a Class I ambulance provider which serves all or part of the same service area of the Class II provider. The agreement may also include other circumstances in which each provider may be asked to assist the other on an occasional basis within the scope and authority of each provider's license to meet the needs of the service area.

(3) Ambulances used in the provision of Class II ambulance services shall:

(a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

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(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(4)(a) The Class II ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly-purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class II ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(5) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(6)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(7) The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(8) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) A Class II ambulance shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving facility;

(b) One (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(c) A Class II provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner;

(d) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

**Section 5. Basic Life Support Personnel.** (1) A Class II provider shall be staffed to provide (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue harm.

(4) The driver on each Class II ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each Class II ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

**Section 6. Equipment and Supplies.** A Class II ground ambulance shall carry and maintain, in full operational order, the following equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes 6F, 8F, 10F and 14F;

(b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);

(c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and

(d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adapter and tubing;

(e) Transparent simple oxygen masks for adults and children;

(f) Transparent nonrebreather oxygen masks for adults, children and infants; and

(g) Nasal cannulas for adults, children, and infants.

(3) Bandages and tape.

(a) Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Ten (10) soft roller self-adhering bandages, various sizes;

(d) Four (4) rolls of adhesive tape, minimum of two (2) sizes;

- (e) Ten (10) triangular bandages with large safety pins; and
- (f) Two (2) sterile burn sheets.
- (4) Miscellaneous supplies.
  - (a) Eye protector pads and shields;
  - (b) One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;
  - (c) Shears for bandages;
  - (d) Hand held flashlight;
  - (e) Two (2) penlights;
  - (f) Two (2) sterile obstetrical kits;
  - (g) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations.
  - (5) Splints and immobilization devices.
    - (a) Lower extremity traction splint, or equivalent as approved by the board, for use in EMT training;
    - (b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the board);
    - (c) Immobilization devices.
      - 1. Short spine board or other acceptable extrication device, as determined by the board; and
      - 2. Long spine board with cervical immobilization accessories;
      - 3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the board.
      - (d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;
      - (e) A short spine board or an acceptable substitute, as determined by the board, shall be provided for administering CPR.
      - (6) Safety supplies and equipment.
        - (a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;
        - (b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;
        - (c) One (1) pocket mask with an isolation valve per patient attendant;
        - (d) One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;
        - (e) One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;
        - (f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;
        - (g) Hospital type disinfectants;
        - (h) Plastic bags for disposal of waste materials;
        - (i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;
        - (j) Two (2) clean blankets, sheets, and pillowcases;
        - (k) Tissues or similar substitute; and
        - (l) An emesis container or similar substitute.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report", (2/91);
  - (b) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406; and
  - (c) Kentucky Board of Emergency Medical Services Form No. 1.
- (2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: Provides for the minimum licensing requirements for Class II ground ambulance providers.
  - (b) The necessity of this administrative regulation: Provides specific minimum licensing requirements for Class II ground ambulance providers.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524(1)(c) requires board to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies requirements for minimum licensing of Class II ground ambulance providers.
  - (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
    - (a) How the amendment will change this existing administrative regulation:
    - (b) The necessity of the amendment to this administrative regulation:
    - (c) How the amendment conforms to the content of the authorizing statutes:
    - (d) How the amendment will assist in the effective administration of the statutes:
    - (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 ambulance services.
    - (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies minimum requirements for licensing Class II ground ambulance providers.
    - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      - (a) Initially: N/A
      - (b) On a continuing basis: N/A
      - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
      - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
      - (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A
      - (9) TIERING: Is tiering applied? Tiering was not applied because all Class II ground ambulance services are treated equally.

## 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. Any local government that administers Class II ground ambulance providers.
- 3. State the aspect or service of local government to which this administrative regulation relates. Any local government that administers Class II ground ambulance providers.
- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
  - Revenues (+/-): Unknown
  - Expenditures (+/-): Unknown
  - Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

STATEMENT OF EMERGENCY  
202 KAR 7:584E

This emergency administrative regulation provides for the minimum licensing requirements for Class III ground ambulance providers. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:584 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:584E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES  
(New Emergency Administrative Regulation)

202 KAR 7:584E. Class III ground ambulance providers.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6523, 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6524 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. This administrative regulation provides for the minimum licensing requirements for Class III ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support" (ALS) means a Class III ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide interfacility medical care between hospitals such as:

1. Basic life support services (BLS);
  2. Advanced airway management such as endotracheal intubation;
  3. Defibrillation; and
  4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and
- (b) Meets the requirements established in this administrative regulation and is licensed by the board to provide health care.

(2) "Base station" means the primary business location where administrative and personnel records are kept.

(3) "Class I ground ambulance provider" means an ambulance provider licensed under 202 KAR 7:570 who meets the requirements of 202 KAR 7:580.

(4) "Class II ground ambulance provider" means an ambulance provider licensed under 202 KAR 7:570 which meets the requirements of 202 KAR 7:582.

(5) "Continuing education" means the provision of information or training within the scope of an individual's level of certification or licensure which is required for recertification or relicensure.

(6) "Critical care experience" means specific patient population experience, specialized training, and current competency in emergency and critical care consistent with approved medical protocols and the patient population to be served.

(7) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance.

(8) "Employee" means personnel who may be paid or volunteer, full time or part time.

(9) "Licensing agency" means the Kentucky Board of Emergency Medical Services.

(10) "Medical attendant" means a licensed medical doctor, registered nurse, paramedic, or certified respiratory therapist who meets the respective requirements specified for a medical attendant in Section 5(8) and (9) of this administrative regulation.

(11) "Medical control" means the process of performing actions to ensure that:

- (a) Care taken on behalf of an ill or injured patient:
  1. Is medically appropriate; and
  2. Includes the prospective, concurrent, and retrospective aspects

of mobile intensive care; and

(b) Includes the following:

1. Quality assurance;
2. Development and approval of medical protocols; and
3. Continuing education.

(12) "Mobile intensive interfacility care" means medical care provided during transport between hospitals utilizing sophisticated medical equipment and supplies and specially trained health care providers operating under approved medical protocols which exceed the normal scope of service of the Class I ground ambulance provider within the service area.

(13) "Mutual aid agreement" means a formal written agreement with another licensed Class III provider for backup assistance in the event the provider is unable to respond to a request for a mobile intensive interfacility transfer or the request exceeds the capacity of the provider.

(14) "Nurse" means a registered nurse licensed by the Kentucky Board of Nursing (KBN).

(15) "Paramedic" means a person licensed by the Kentucky Board of Medical Licensure (KBML).

(16) "Physician" means a medical doctor licensed by the KBML.

(17) "Provider" means a Class III ground ambulance provider.

(18) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin such as needles and glass ampules.

Section 2. Licensing Requirements. (1) Except as provided in subsection (2) of this section, a person shall not provide, advertise, or profess to engage in the provision of Class III ground ambulance services where the original point of patient contact is in Kentucky without having first obtained:

(a) A certificate of need; and

(b) A license from the board pursuant to 202 KAR 7:570.

(2) A provider currently licensed under 202 KAR 7:570 and 202 KAR 7:580 as a specialized ground ambulance provider or specialized Class I ground ambulance provider may be licensed as a Class III provider without obtaining a new certificate of need if:

(a) The provider has previously been approved by the board to provide neonatal transfers and other critical care transfers between hospitals;

(b) Makes application to the board within one (1) year from the effective date of this administrative regulation; and

(c) Meets the requirements of this administrative regulation.

(3) A Class III provider shall not be permitted to convert their license to:

(a) A Class I ground ambulance provider;

(b) A Class II ground ambulance provider; or

(c) An air ambulance provider licensed under 202 KAR 7:590 without first obtaining a new certificate of need.

(4) A provider shall:

(a) Comply with local, state, and federal statutes and regulations; and

(b) Be established and operated by:

1. A licensed hospital; or

2. A person as defined in KRS 216B.010(15) who is operating under a contract or an affiliation agreement with a licensed hospital.

(5) A provider may request:

(a) To narrow and restrict their scope of service consistent with their approved certificate of need to serve a particular patient population such as:

1. Neonatal;
2. Pediatric;
3. High risk obstetrics; or
4. Adult cardiac or trauma; and

(b) Variances in equipment, supplies, or personnel unique to that patient population.

(6) Prior to being licensed, a provider shall submit to the board the following for review and approval.

(a) The name and qualifications of the provider medical director and arrangements for medical direction at times when the medical director is unavailable;

(b) The medical protocols and utilization criteria to be utilized by the provider;



- (c) The qualifications of the medical attendants in terms of:
  - 1. Critical care experience;
  - 2. Specialized training; and
  - 3. Evidence of clinical competency;
- (d) The list of proposed additional equipment, supplies, and medications necessary for the monitoring and treatment of patients having critical conditions; and
- (e) A written contingency plan in place to obtain assistance to the Class III provider in the event of a mechanical breakdown during transport.
- (7) The licensing agency shall utilize the ALS Scope of Practice Subcommittee to review the materials described in subsection (6) of this section and make recommendations to the licensing agency based on:
  - (a) The scope of service to be provided;
  - (b) The patient populations to be served; and
  - (c) The types of medical conditions and treatments which are contained in the protocols.
- (8) If any of the materials described in subsection (6) of this section are to be changed or modified by the provider after review and approval by the licensing agency, the licensing agency shall be notified in writing. Such changes or modifications shall not be implemented without:
  - (a) Review by the ALS Scope of Practice Subcommittee; and
  - (b) Approval of the licensing agency.
- (9) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:
  - (a) Identity and location of the base station; and
  - (b) Designation of the geographic area to be served by the licensee.
- (10) A Class III provider shall not be precluded from providing mutual aid assistance, within their scope of service pursuant to subsection (5) of this section, to a Class I ground ambulance service outside of the geographic service area.
- (11) Except for disaster assistance, a Class III provider shall not make an emergency scene run.

**Section 3. Management Requirements. A provider shall:**

- (1) Establish lines of authority and an organizational chart to include the designation of:
  - (a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and
  - (b) A designee who shall serve if necessary in the absence of the administrator;
- (2) A provider shall keep accurate records and reports concerning the transportation of a patient between hospitals which shall be maintained at the base station of the licensee and shall be available for periodic review as deemed necessary by the licensing agency;
- (3) A provider shall provide a full record to the receiving facility of treatment administered at the pickup location and during transit. Required records and reports shall include:
  - (a) The "Kentucky Emergency Medical Service Ambulance Run Report", Form EHS-8A, incorporated by reference; or
  - (b) An equivalent provider specific transport record acceptable to the licensing agency;
- (4) Copies of completed run report forms shall be kept as required by KRS 216B.410(1) in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age;
- (5) A copy of the run form, or electronic equivalent, shall be forwarded to the board within thirty (30) days following the end of the month in which the run occurred;
- (6) Personnel files on each ambulance driver and attendant shall be maintained for:
  - (a) A minimum of five (5) years following termination or retirement from employment; or
  - (b) Five (5) years following the demise of the employee;
- (7) Individual ambulance driver and attendant personnel files shall contain evidence of:
  - (a) Training;
  - (b) Experience;

- (c) Current credentials including proof of:
  - 1. CPR certification; and
  - 2. Appropriate licensure or certification for medical attendants; and
- (d) Current and valid driver's license for ambulance drivers;
- (e) A preemployment criminal and Department of Transportation driver's records check for each individual driver or attendant; and
- (f) Health records to include:
  - 1. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and
  - 2. Health records which meet the requirements of KRS 216B.410(3);
- (8)(a) A provider shall maintain and follow written policies and procedures that are reviewed on an annual basis by the provider in order to assess their effectiveness.
  - (b) The policies and procedures shall include the following areas:
    - 1. Organizational structure, staffing, and allocation of responsibility and accountability;
    - 2. Mutual aid agreements with other ambulance providers which include contingency plans for completion of transport in the event of a mechanical failure in the Class III vehicle;
    - 3. Personnel performance guidelines;
    - 4. A plan to assure that a continuing education program shall be provided for its staff. The program shall include:
      - a. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines; and
      - b. Patient care in the transportation environment;
- (9) A plan for the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;
- (10) A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs;
- (11) The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of the licensee;
- (12) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care; and
- (13) Policies and procedures concerning:
  - (a) Vehicle maintenance;
  - (b) Standard operating procedures (SOPS);
  - (c) Patient protocols;
  - (d) Ambulance response;
  - (e) Transport limitations; and
  - (f) Patient destination.

**Section 4. Operating Requirements. (1) A provider shall have a mutual aid agreement with another Class III provider or an ALS air ambulance provider which is to be enacted if the provider:**

- (a) Is unable to respond to a request for a mobile intensive interfacility transfer; or
- (b) Receives and declines a request for a mobile intensive interfacility transfer.
- (2) If none of the mutual aid providers are willing or able to accept the mobile intensive interfacility transfer, any licensed Class III provider or an ALS air ambulance provider may accept the transfer.
- (3) An ambulance used in the provision of Class III ground ambulance services shall:
  - (a) Be maintained in good operating condition and in full repair;
  - (b) Be designed to provide for the medical care and transportation of a patient consistent with the mission statement of the service;
  - (c) Have interior lighting adequate to ensure complete observation of the patient;
  - (d) Have the capability of shielding the cab from light in the patient care area during night operation;
  - (e) Have an electric inverter or generator, with two (2) outlets, to convert direct current (DC) to alternating current (AC) for operation of specialized equipment, such as an isolette or intra-aortic balloon pump.

(f) Except for color and provider identification, comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) General Services Administration (GSA) federal specifications in effect at the time the ambulance is manufactured; and

(g) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(4) The provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(5) For an ambulance that is later modified, a provider shall require the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(6) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) When providing patient care, the heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions; and

(b) When providing patient care, the air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions.

(7) The name of the provider and the affiliated hospital shall appear on the exterior surface of the ambulance.

(8) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order.

(9) Documentation shall be maintained by the provider to support evidence of:

- (a) Inspection;
- (b) Calibration;
- (c) Maintenance; and
- (d) Operation of the ambulance and its equipment in accordance with:

1. The requirements and maintenance schedule of the manufacturer; or

2. Other regulatory agencies.

(10) Unless precluded by emergency conditions, the interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition.

Section 5. Class III Personnel. (1) There shall be no more patients, personnel, or other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation.

(2) All personnel shall:

(a) Be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy; and

(b) Receive, on an annual basis, orientation on safe patient transport and patient care in the transport environment.

(3) The driver on each Class III ambulance run shall:

- (a) Have a current motor vehicle operator's license;
- (b) Have at least two (2) years of experience as a licensed driver or operator; and

(c) Complete a defensive driving training program that is developed by the provider or in conjunction with another agency or organization which has developed a program.

(4) The training program shall be:

- (a) Repeated for each driver at least every four (4) years; and
- (b) Consist of at least four (4) hours review of driving a vehicle under emergency conditions;

(5) Documentation shall be available to support training in the following areas:

(a) Review of KRS 189.910 through 189.950 regarding emergency vehicles.

(b) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

pose; and

(c) Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(6) Unless one (1) of the medical attendants on the run is a Kentucky certified paramedic, the driver shall be a Kentucky certified emergency medical technician (EMT).

(7) Except as provided in subsection (10) of this section, a provider shall be staffed to provide, at least two (2) medical attendants for each run.

(8) One (1) ambulance medical attendant on each Class III run shall:

(a) Have at least two (2) years critical care experience;

(b) Be certified or licensed for one (1) of the following levels:

1. Physician licensed by the Kentucky Board of Medical Licensure (KBML); or

2. Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); and

(c) Show evidence of successful completion, within the last two (2) years of one (1) of the following:

1. American Heart Association (AHA) Advanced cardiac life support (ACLS) provider course for adult patients;

2. AHA pediatric advanced life support (PALS) course for pediatric patients; or

3. AHA neonatal resuscitation provider (NRP) course for neonates.

(9) The second medical attendant shall have certification or licensure for one (1) of the following levels:

(a) Paramedic. If paramedics are utilized, a provider shall provide evidence that the qualifications of the medical director and medical protocols have been approved by the KBML;

(b) RN licensed by the KBN who has at least two (2) years critical care experience;

(c) Respiratory therapist certified by the Kentucky Board of Respiratory Care who has at least two (2) years critical care experience; or

(d) Physician licensed by the KBEMS;

(10) A provider, whose mission is to provide critical care and transport of the neonatal infant, shall be allowed to return the neonatal patient in an isolette nonemergently to the referring facility nursery with one (1) ambulance medical attendant who meets the personnel requirements set forth in subsection (8) of this section.

(11) A provider desiring variations in personnel shall submit a request in writing for consideration and approval by the board.

Section 6. Basic Life Support (BLS) Equipment and Supplies. Unless a variance is approved by the board, at the time of patient transport, a provider shall carry and maintain in full operational order the following BLS equipment and supplies in sizes which are applicable to the age and patient population served by the provider:

(1) Fixed and portable suction apparatus including:

(a) Rigid tonsillar catheters; and

(b) Flexible catheters;

(2) Disposable bag-valve-mask ventilation units;

(3) Nasopharyngeal and oropharyngeal airways;

(4) A cuff and stethoscope, or equivalent device for measuring blood pressure.

(5) Oxygen equipment including:

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator with a range of zero to fifteen (15) liters per minute;

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adapter and tubing;

(e) Transparent simple oxygen masks;

(f) Transparent nonrebreather oxygen masks; and

(g) Nasal cannulas;

(6) Bandages and tape to include:

(a) Two (2) sterile universal dressings;

(b) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Six (6) soft roller self-adhering bandages in various sizes;

(d) Four (4) rolls of adhesive tape in at least two (2) sizes; and

- (e) One (1) sterile burn sheet;
- (7) One (1) roll of aluminum foil, or an occlusive substitute;
- (8) Shears for bandages;
- (9) Hand held flashlight;
- (10) Two (2) penlights;
- (11) One (1) sterile obstetrical kit;
- (12) If stocked on the ambulance, sterile irrigation fluids with current expiration date, shall be obtained and maintained according to local, state, and federal statutes and regulations.
- (13) Splints and immobilization devices including:
  - (a) Lower extremity traction splint, or equivalent;
  - (b) Splints for arm, leg, and foot such as inflatable air splints, padded boards, ladder splints, or similar substitute;
  - (c) Short spine board or other similar extrication device;
  - (d) Long spine board or orthopedic scoop stretcher with cervical immobilization accessories; and
  - (e) Rigid, stiff cervical collars;
- (14) Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and one (1) shall located in the patient compartment;
- (15) Multiposition stretcher or isolette with wheels and a mechanism to secure the stretcher or isolette while in transit;
- (16) One (1) pocket mask with an isolation valve per patient attendant;
- (17) One (1) clean scrub gown or substitute, such as disposable coveralls, a disposable mask, and a pair of gloves per patient attendant;
- (18) One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;
- (19) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;
- (20) Hospital type disinfectants;
- (21) Plastic bags for disposal of waste materials;
- (22) If sharps are carried, a puncture resistant container for disposal of sharp objects;
- (23) Two (2) sets of clean blankets, sheets, and pillowcases; and
- (24) An emesis container or similar substitute;
- (25) A provider whose exclusive mission is to provide critical care and transport of infants shall not be required to carry the following adult specific equipment:
  - (a) Rigid tonsillar catheters as required in subsection (1)(a) of this section;
  - (b) One (1) sterile obstetrical kit as required in subsection (11) of this section; and
  - (c) Splints and immobilization devices as required in subsection (13)(a), (b), (c), and (d) of this administrative regulation.

Section 7. ALS Equipment and Supplies. (1) At the time of patient transport, a provider shall carry on each vehicle, and maintain in full operational order, the following ALS supplies and equipment and additional supplies and equipment as provided for in protocols established in Section 9(1)(a) of this administrative regulation, in sizes which are applicable to the age and patient population served by the provider:

- (a) An endotracheal intubation set consisting of:
  - 1. Laryngoscope handle;
  - 2. Straight laryngoscope blades;
  - 3. Curved laryngoscope blades;
  - 4. Extra batteries and bulbs for blades and handles; and
  - 5. Endotracheal tubes for oral and nasal placement;
- (b) Stylettes;
- (c) Magill forceps;
- (d) One-half (1/2) inch wide twill tape or functional equivalent for securing endotracheal tubes;
- (e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
- (f) Bite block;
- (g) A portable monitor defibrillator that:
  - 1. Provides a visual display of cardiac electrical activity;

- 2. Provides a hard copy of cardiac electrical activity measure;
- 3. Delivers direct current energy over a variable range which is suitable for pediatric and adult usage;
- 4. Has adult and pediatric external paddle electrodes for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;
- 5. May be operated from internal rechargeable batteries;
- 6. Has synchronized countershock capability for cardioversion and external pacing;
- 7. Has a patient monitoring cable which has the following accessories:
  - a. Electrode paste or gel or equivalent;
  - b. Electrode pads or functional equivalent for use with the patient monitoring cable; and
  - c. One (1) additional roll of paper for hard copy printout.
- (h) Three (3) sizes in eighteen (18) through twenty-five (25) gauge sterile, disposable needles;
- (i) Three (3) sizes in 1cc to 30cc sizes disposable syringes;
- (j) If blood samples are to be drawn, containers for the collection of blood samples shall be available;
- (k) Tourniquet for use with venipuncture procedure;
- (l) Dextrostix or functional equivalent for the measure of blood glucose levels;
- (m) Disposable, individually packaged antiseptic wipes;
- (n) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;
- (o) Intravenous catheter over needle devices in twelve (12) through twenty-four (24) gauge;
- (p) Butterfly needles in nineteen (19) through twenty-five (25) gauge;
- (q) Intraosseous needles;
- (r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;
- (s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18F adult, and sizes 50-60cc catheter tipped syringes or equivalent; and
- (t) Pulse oximeter or other device capable of determining blood oxygen saturation.
- (2) A provider whose exclusive mission is to provide critical care and transport of infants shall not be required to carry the following adult specific equipment:
  - (a) Bite block as required in subsection (1)(f) of this section; and
  - (b) Nasogastric tubes in sizes:
    - 1. 10 to 18F adult; and
    - 2. Fifty (50) or sixty (60) cc catheter tipped syringes or functional equivalent tubes as required in subsection (1)(s) of this section.
  - (3) A provider shall stock and maintain drugs and medications as required by:
    - (a) Protocols established in accordance with Section 9(1)(a) of this administrative regulation; and
    - (b) Local, state, and federal statutes and regulations;
    - (4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the board.
    - (5) A provider who stores and utilizes controlled substances shall have protocols approved by the cabinet's Drug Control Branch.
    - (6) In addition to the standard ALS equipment listed above, each Class III ground ambulance shall have additional equipment, supplies, and medications as necessary for the monitoring and treatment of patients having critical conditions consistent with the mission of the service, the population to be served, and the approved patient care protocols.

Section 8. Communication System. (1) A communications system shall be developed, coordinated, and maintained by each provider.

- (2) A provider shall:
  - (a) Be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center, medical control, or the receiving hospital;
  - (b) Have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner; and
  - (c) Provide annual orientation to all drivers and attendants related to communication protocols that have been established by the service.

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Section 9. Medical Director. (1) A provider shall have a written agreement with a physician medical director who shall:

(a) Develop protocols and provide medical consultation to and supervision of the ambulance personnel in accordance with the written agreement between the provider and the physician medical director;

(b) Grant authority for certified and licensed ambulance personnel to perform certain skills and procedures according to protocols;

(c) Retain and exercise authority to limit, suspend, or terminate approval of ambulance medical personnel to perform skills and procedures previously granted under the established protocols;

(d) In absence of the medical director, approve or transfer authority for a supervising physician to temporarily act as medical director on the behalf of the Class III ambulance service during the period of the absence;

(e) Participate in the continuing education of the ambulance service medical personnel; and

(f) Participate in the development and implementation of monthly quality improvement utilization and review plans described in Section 10 of this administrative regulation.

(2) The medical director shall:

(a) Have completed a residency program in emergency medicine or other specialty appropriate to the mission statement of the provider;

(b) Be a physician who:

1. Has completed, or is in the process of completing the AHA ACLS provider course; and

2. Has certification in advanced trauma life support or basic trauma life support; or

3. Is a physician who has on file written approval from the licensing agency or lead agency which has been granted based on the physician's ability to document qualification by:

a. Patient population;

b. Experience; and

c. Current competency in patient care consistent with the mission statement of the provider.

(c) The medical director for a provider whose exclusive mission is to provide critical care and transport of the neonatal infant shall:

1. Have completed fellowship training in neonatology;

2. Have completed a neonatal resuscitation provider (NRP) course; and

3. Be affiliated with a hospital or medical facility providing neonatal intensive care.

Section 10. Utilization Standards and Review. (1) A provider shall:

(a) Have utilization criteria or protocols of Class III transport; and

(b) Have policies and procedures concerning:

1. Patient population such as:

a. Adult;

b. Pediatric;

c. Obstetric; or

d. Neonate;

2. Patient destination;

3. Transport limitations; and

4. Availability of services.

(2) A Class III ambulance shall not be utilized for the transport of a patient unless:

(a) A request for transport has been made by the referring hospital; and

(b) The physician medical director or medical control physician has:

1. Reviewed the known medical information of the patient; and

2. Deemed that Class III ambulance transportation meets the utilization criteria or protocol of the service.

(3) A provider shall develop, implement and maintain records of a review process or quality improvement program to determine appropriate utilization of services.

(4) The review shall include the following:

(a) The extent or severity of patient injury or illness;

(b) Interventions performed or maintained;

(c) Transport outcome of the patient;

(d) Timeliness of the transport; and

(e) Conditions that may have greatly delayed or prevented Class I provider transportation, to the detriment of the patient. Documentation of the unavailability of appropriate Class I provider transportation as

determined by the sending facility or the sending physician shall be maintained as part of the review; or

(f) The need for a higher level of care than was available at the referring facility or location or during Class I or Class II provider transportation to the receiving facility.

(5) A semiannual cumulative report of the findings of the review of Class III ambulance utilization shall be on file at the Class III ambulance service base station.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report", (2/91);

(b) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service; and

(c) Kentucky Board of Emergency Medical Services Form No. 1.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for the minimum licensing requirements for Class III ground ambulance providers.

(b) The necessity of this administrative regulation: Provides specific minimum licensing requirements for Class III ground ambulance providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524(1)(d) requires the board to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies requirements for minimum licensing of Class III ground ambulance providers.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies minimum licensing requirements for Class III ground ambulance providers.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not applied because

all Class III ground ambulance services are treated equally.

# 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. Any local government that administers Class III ground ambulance providers.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that administers Class III ground ambulance providers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

## STATEMENT OF EMERGENCY 202 KAR 7:590E

This emergency administrative regulation sets forth the licensure and operation requirements for air ambulance providers. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:590 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:590E.

PAUL E. PATTON, Governor  
MARK K. BAILEY, Chairperson

## KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

### 202 KAR 7:590E. Air ambulance service providers.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.623, 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6524 requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. This administrative regulation sets forth the licensure and operation requirements for air ambulance providers.

Section 1. Definitions. (1) "Air ambulance" means a helicopter or fixed-wing aircraft that is specially designed, constructed, or has been modified or equipped with the intent of using the same, for the purpose of transporting any individual who is sick, injured, or otherwise incapacitated, who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.

(2) "Air medical communications specialist (ACS)" means an emergency medical technician (EMT) certified by the board acting in the air medical communications environment with training appropriate to the mission of the air ambulance service who shall have documented training in the following areas:

(a) Federal Aviation Administration (FAA) regulations and Federal Communications Commission (FCC) regulations pertinent to air ambulance operations;

(b) Air medical radio communications;

(c) Flight coordination and utilization;

(d) Navigation and weather interpretation;

(e) Flight following; and

(f) Emergency procedures.

(3) "Airline transport pilot (ATP)" is a pilot who has received a certificate issued by the FAA which denotes the highest level of achievement a pilot may attain.

(4) "Advanced life support (ALS)" is defined in 202 KAR 7:570.

(5) "Basic life support (BLS)" is defined in 202 KAR 7:570.

(6) "FAA" means the Federal Aviation Administration.

(7) "FAA" means federal aviation regulations.

(8) "Flight nurse" means a registered nurse licensed by the Kentucky Board of Nursing (KBN) acting in the air medical environment with training appropriate to the mission of the individual air ambulance service who shall have documented service specific training in the following areas:

(a) Altitude physiology;

(b) Aircraft safety;

(c) Survival techniques; and

(d) Flight operations.

(9) "Flight paramedic" means a paramedic licensed by the Kentucky Board of Emergency Medical Services (KBEMS) acting in the air medical environment with training appropriate to the mission of the individual air ambulance service. In addition, a flight paramedic shall have documented service specific training in the following areas:

(a) Altitude physiology;

(b) Aircraft safety;

(c) Survival techniques; and

(d) Flight operations.

(10) "Helipad" means a designated area, usually with a prepared surface, on a heliport, airport, landing or take-off area, apron or ramp, or movement area used for take-off, landing or parking helicopters.

(11) "IFR" means instrument flight rules.

(12) "Landing zone" means a prepared or unprepared area where a helicopter will be landing. The landing zone shall:

(a) Be large enough to accommodate the aircraft being used;

(b) Be free of dangerous obstacles;

(c) Have an adequate approach and departure path; and

(d) If landing at night, have a ground light source or sources marking boundaries.

(13) "Licensing agency" means the Kentucky Board of Emergency Medical Services.

(14) "PIC" means pilot in command.

(15) "SIC" means second in command.

(16) "VFR" means visual flight rules.

Section 2. Air Ambulance Licensing. (1) A person shall not provide, advertise, or profess to engage in air ambulance services in Kentucky without having first obtained a license from the licensing agency.

(2) The license shall designate the specific Kentucky geographic area to be served and shall be displayed in a prominent place at the service base station.

(3) The licensee shall designate the number of aircraft to be operated and provide the licensing agency with identifying information such as:

(a) Type of aircraft;

(b) Serial number; and

(c) Aircraft identification.

(4) Additional aircraft shall not be operated until the licensing agency has been notified and has verified that the aircraft meets the requirements of this administrative regulation. The provider shall not be precluded from utilizing a similarly equipped aircraft if the primary aircraft is out of service for maintenance.

(5) The air ambulance shall be licensed to the primary service maintaining ownership or leasehold.

(6) An individual aircraft may be designated for use by other licensed services so long as a memorandum of understanding between the primary aircraft owner/operator exists concerning replenishment of equipment and supplies, required maintenance, and proper reimbursement procedures.

(7) The licensee shall inform the licensing agency of:

(a) Arrangements for securing aircraft for temporary use; and

(b) Be notified the next business day of an aircraft change if the

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primary aircraft is out of service for maintenance or if there is a need for use of a temporary aircraft.

(c) Changes which occur after initial licensure, such as change of service directors or location where aircraft shall be based.

Section 3. Standards for the Operation of an Air Ambulance. (1) An air ambulance provider shall:

(a) Have a physician medical director in accordance with the applicable requirements of Section (6) of this administrative regulation;

(b) Have established and advertised appropriate utilization criteria or protocols of air transport which have been reviewed and approved by the Air Ambulance Subcommittee;

(c) Have an ongoing quality management program as outlined in Section 6(1)g of this administrative regulation.

(d) Have a mission statement which defines the precise geographical service area of the service, transport patient population and availability of services.

(2) An air ambulance shall not be utilized for the transport of a patient unless:

(a) A request for transport has been made; and

(b) The physician medical director or medical control physician, has reviewed the known medical information of the patient and has deemed that air ambulance transportation of the patient meets the utilization criteria or protocol of the air ambulance provider.

(3) An air ambulance service shall develop, implement and maintain records of a review process, quality improvement program, or other form of regular review of air ambulance utilization.

(a) The utilization review shall include an examination of compliance with the air transport criteria for appropriate utilization of air transport. Compliance utilization will be based on one (1) of the following:

1. The extent or severity of patient injury or illness;

2. Conditions that may have greatly delayed or prevented ground ambulance transportation, to the detriment of the patient; or

3. The need for a higher level of care than was available at the referring facility or location or during ground ambulance transportation to the receiving facility.

(b) A semiannual cumulative report of the findings of the review of air ambulance utilization shall be on file at the air ambulance service base station.

(4) A rotor wing air ambulance service operator shall provide proof that it:

(a) Complies with FAR pertaining to maintenance inspections, flight, and duty time;

(b) Complies with FAA and FAR required maintenance activities; and

(c) Holds FAR required air ambulance operations specifications.

(5) A fixed wing air ambulance service operator shall provide proof that it:

(a) Complies with FAR which pertain to maintenance inspections, flight and duty time;

(b) Complies with FAA and FAR required maintenance activities; and

(c) Holds FAR required air ambulance operations specifications.

Section 4. Air Ambulance Aircraft. (1) Fixed and rotor wing air ambulance aircraft shall:

(a) Have an entry that allows patient loading and unloading without tilting the patient greater than thirty (30) degrees from the horizontal axis;

(b) Be climate controlled to prevent temperature extremes that would adversely affect patient care;

(c) Be configured in such a way that air medical personnel shall have access to the patient in order to begin and maintain both basic and advanced life support;

(d) Have interior lighting adequate to ensure complete observation of the patient;

(e) Have the capability of shielding the cockpit from light in the patient care area during night operation;

(f) Have an electric inverter, with two (2) outlets, to convert direct current (DC) to alternating current (AC) for operation of specialized equipment, such as an isolette or intra-aortic balloon pump.

(g) Have equipment, stretchers, and seating:

1. Arranged so as not to block rapid egress by air ambulance personnel or patients; and

2. Affixed or secured in FAA approved racks, compartments, or strap restraints which meet FAR "G" loading requirements; and

(h) Have a patient stretcher or litter which:

1. Has the capability to raise the head of the patient; and

2. Has appropriate devices to secure the patient to the stretcher.

(2) Fixed wing aircraft shall:

(a) Be pressurized if patient flights are to exceed 6000 feet mean sea level; and

(b) Provide proof of an FAR Part 135 certificate with an FAR required air ambulance specification.

Section 5. Air Ambulance Transportation Flight Personnel. (1) The rotor wing pilot in command shall possess commercial rotorcraft certification or ATP certification and a minimum of 2,000 rotorcraft flight hours as pilot in command.

(2) A rotor wing pilot shall:

(a) Be trained in accordance with operators FAR Part 135 air ambulance operations specifications;

(b) Have a minimum of ten (10) hours as pilot in command in the specific aircraft type prior to performing EMS missions;

(c) Have five (5) hours local area orientation which shall include mission specific night orientation of at least two (2) hours flight time; and

(d) Be specifically trained and experienced in flying the terrain and conditions unique to the flight program.

(3) The fixed wing pilot shall be trained in accordance with operators FAR Part 135 operations specifications.

(4) The PIC shall have twenty-five (25) hours as pilot in command in the specific aircraft and type prior to performing EMS missions.

Section 6. Air Ambulance Medical Personnel. (1) An ALS air ambulance provider shall have a written agreement with a physician medical director who shall be licensed to practice medicine or osteopathy in the state which the air medical service is based:

(a) Assume responsibilities in accordance with the provisions of 201 KAR 9:171, Sections 2(1) and (2);

(b) Provide medical consultation to and supervision of the medical flight personnel in accordance with the written agreement between the air ambulance service provider and the physician medical director;

(c) Grant authority for certified medical flight personnel to perform certain skills and procedures according to protocols;

(d) Retain and exercise authority to limit, suspend, or terminate approval of air ambulance medical flight personnel to perform skills and procedures previously granted under the established protocols;

(e) In the absence of the medical director, approve or transfer authority for a supervising physician to temporarily act on the behalf of the air ambulance service during the period of absence.

(f) Participate in the continuing education of the air ambulance service medical flight personnel;

(g) Participate in the development of monthly quality improvement plans for the air ambulance service which shall include the:

1. Reason for and the appropriateness of air patient transport;

2. Mechanism or seriousness of injury or illness;

3. Interventions performed or maintained;

4. Transport outcome of the patient; and

5. Timeliness of the transport.

(h) Have operational knowledge of communications equipment and procedures.

(i) Review issues regarding prehospital and interhospital transport.

(j) Performs utilization reviews of flight program resources.

(k) Maintains working knowledge of disaster planning and mass casualty incident management.

(l) Ensures human resources needs are met while possessing a working knowledge of risk management and medicolegal issues including transfer administrative regulations.

(m) Must have knowledge or training in the basic principles of research.

(2) If flight paramedics are utilized, an ALS air ambulance provider shall provide evidence that the qualifications of the medical director and medical protocols have been reviewed and recommended for approval by the ALS to assure compliance with the requirements of this

section, and 201 KAR 9:171, Section 2(6). After review by the committee and subcommittee, all information shall be forwarded to the board for its approval.

(3) The medical director shall have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or shall:

(a) Be a physician who holds, or is in the process of completing certification in the American College of Surgeon's Advanced Trauma Life Support;

(b) Be a physician who holds, or is in the process of completing certification in the American College of Emergency Physician's Basic Trauma Life Support or its equivalent; or

(c) Be a physician who has on file written approval from the licensing agency or lead agency which has been granted based on the physician's ability to document qualification by:

1. Patient population;
2. Experience; and
3. Current competency in patient care consistent with the mission statement of the air ambulance service provider along with the following:

- a. The ability to recognize and stabilize critical patients; and
- b. Knowledge of emergency medical service and the extensive hospital referral systems including dispatch, communications, laws, regulations, and overall system operations.

(4) The medical director shall have on file documentation to verify completion of:

(a) Two (2) hours of education in altitude physiology and stressors of flight; and

(b) Two (2) hours of recurrent training in a relevant subject biannually.

(5) ALS flight medical personnel shall attend flight orientation training prior to acting as primary medical personnel. Flight orientation training shall include:

- (a) Two (2) hours of altitude physiology;
- (b) Aircraft specific operations and in-flight safety;
- (c) Emergency egress and survival training;
- (d) Scene safety;
- (e) Use of extrication equipment;
- (f) Scene triage;
- (g) State EMS standard; and
- (h) Communication equipment utilization and emergency procedures.

(6) Rotor wing patient missions shall have one (1) flight nurse and one (1) flight paramedic in attendance in the patient care area. A variance from the flight paramedic requirement, necessitated by staffing or patient care requirements shall be permitted only after the medical director or their designee approves the action.

(7) ALS fixed wing patient missions shall have at least two (2) medical providers.

(8) The first patient attendant on an ALS fixed wing patient mission shall be:

- (a) A flight nurse; or
- (b) A licensed registered nurse qualified by specific patient population, experience, and current competency in emergency and critical care.

(9) The second patient attendant on an ALS fixed wing patient mission shall be:

- (a) A licensed registered nurse qualified by specific patient population, experience, and current competency in emergency and critical care;
- (b) A licensed flight paramedic;
- (c) A certified or registered respiratory therapist qualified by specific patient population, experience, and current competency in mission specific patient care; or
- (d) A physician licensed and qualified by relevant training, experience, and current competency in mission specific patient care.

(10) A staffing variance necessitated by staffing or patient care requirements shall not be permitted unless prior approval is granted by the medical director or their designee.

(11) BLS fixed wing patient missions shall have, in addition to the pilot, at least two (2) EMTs with air medical training consisting of:

- (a) Flight physiology;
- (b) Aircraft safety;

- (c) Survival techniques;
- (d) Two (2) hours of altitude physiology;
- (e) Aircraft specific operations and in-flight safety;
- (f) Emergency egress and survival training;
- (g) State EMS standards;
- (h) Communication equipment utilization; and
- (i) Emergency procedures.

Section 7. Air Ambulance Equipment and Supplies. (1) Air ambulance equipment and supplies shall be maintained according to recommendations of the manufacturer.

(2) Equipment shall be functional at all altitudes and shall not interfere with aircraft avionics. Conversely, avionics shall not interfere with medical equipment operations.

(3) The following BLS equipment and supplies shall be required on fixed and rotor wing air ambulance aircraft:

- (a) Fixed suction apparatus including:
  1. Ridged flexible suction tubing;
  2. Flexible catheters French sizes;
- (b) Hand operated mask ventilation units in 1000cc and 250 ml sizes capable of use with oxygen;
- (c) Oral-pharyngeal airways in adult, child, and infant sizes;
- (d) Nasopharyngeal airways in adult, child, and infant sizes;
- (e) Adult, obese adult, child, and infant sphygmomanometer cuffs. A permanently mounted sphygmomanometer shall not satisfy this requirement;

- (f) Adult stethoscopes;
- (g) Fixed and portable oxygen system to include:
  1. Pressure gauge and flow rate regulator with a range from zero to fifteen (15) liters per minute;
  2. Adapter and tubing;
  3. Transparent nonrebreather oxygen mask in adult and pediatric sizes; and

4. Nasal cannulas in adult and pediatric sizes;
- (h) Bandages and tape;
- (i) Sterile bulky absorbent dressings;
- (j) Sterile gauze dressings four (4) inches by four (4) inches;
- (k) Soft roller self-adhering bandages in various sizes;
- (l) Rolls of adhesive tape in a least two (2) sizes;
- (m) Triangular bandages with large safety pins;
- (n) Sterile burn sheet;
- (o) Splints and spinal immobilization devices which shall include:
  1. One (1) lower extremity traction splint;
  2. Securing straps;
  3. One (1) short spineboard or other upper spinal immobilization or extrication device;

4. One (1) full body spinal immobilization device; and
5. Rigid cervical collars with tracheal access in large, medium, small adult and pediatric sizes;

- (p) Safety equipment and supplies which shall include:
  1. An ABC multipurpose fire extinguisher which meets the FAA requirements for each specific aircraft and configuration;
  2. One (1) set of personal protective clothing and devices per medical attendant;
  3. Towelettes, solution or other similar supplies for cleansing of the hands;

4. Plastic bags for disposal of waste material;
5. Puncture resistant container for disposal of sharp objects; and
6. Two (2) full sets of clean and appropriate linen.
- (q) An emesis container or similar substitute;
- (r) Environment, terrain, and mission specific rescue and survival supplies; and

- (s) Stretcher or litter with:
  1. Head-raising capabilities;
  2. An FAA approved aircraft specific mechanism for securing the stretcher or litter in the aircraft during transit; and
  3. An FAA approved aircraft specific patient to stretcher securing mechanism.

(4) The following ALS equipment will be available for use on both rotary and fixed wing aircraft while responding to and transporting an ALS patient:

- (a) Endotracheal intubation set to include:
  1. Adult laryngoscope handle with spare bulb and batteries;



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2. Laryngoscope blades, curved 3 and 4;
3. Laryngoscope blades, straight 0, 1 and 2;
4. Endotracheal tubes to include;
5. Pediatric uncuffed 2.5 through 5.5;
6. Adult cuffed 5.5 through 8.0;
7. Stylettes:
  - a. Adult size; and
  - b. Pediatric size;
8. Magill forceps:
  - a. One (1) adult; and
  - b. One (1) pediatric;
9. One half (1/2) inch twill tape or substitute;
10. Water soluble lubricant;
11. One (1) bite block;
12. Advanced airway surgical tray to include:
  - a. Scalpel;
  - b. Hemostats;
  - c. Sutures;
  - d. Sterile barriers;
  - e. Skin disinfectant; and
  - f. Chest tubes:
    - (i) Pediatric sizes; and
    - (ii) Adult sizes.
13. Portable monitor defibrillator with:
  - a. Visual display;
  - b. Hard copy;
  - c. Variable range for adults and pediatrics;
  - d. External paddles for adults and pediatrics;
  - e. Internal rechargeable batteries;
  - f. Synchronized countershock;
  - g. Patient monitoring cable; and
  - h. Electrode pads or paste.
14. A variety of needles, syringes, I.V. equipment to include:
  - a. Fluids (normal saline), (lactated ringers) and (D5W);
  - b. Intraosseous needle;
  - c. Microdrip set;
  - d. Macrodrip set;
  - e. Adult angiocaths; and
  - f. Pediatric angiocaths.
15. Central line access equipment (specify by protocol);
16. Nasogastric tubes:
  - a. Adult size; and
  - b. Pediatric size.
17. Pediatric drug dosage reference;
18. Neonate or infant suction apparatus; and
19. Approved drug list with medications present and within expiration date.

Section 8. ALS Air Ambulance Service Providers. (1) A rotor wing ALS air ambulance service shall meet the applicable requirements of Sections 1 through 7 of this administrative regulation. In addition, it shall also meet the following requirements:

(a) Evidence shall be on file to verify that the ALS written protocols have been reviewed by the appropriate agency;

(b) At the point of patient contact and transportation the air ambulance provider shall:

1. Carry and maintain in full operational order, the supplies and equipment as provided for in Section 7 of this administrative regulation.

2. Stock and maintain minimal medications needed for resuscitation, advanced cardiac life support, and any other medications as provided for in:

a. Protocols established in accordance with paragraph (a) of this subsection; and

b. Local, state and federal statutes and regulations.

(2) Controlled drugs shall be stored in a locked compartment or equivalent as approved by the board.

(3) An air ambulance service which stores and utilizes controlled substances, shall have protocols approved by the cabinet's Drug Control Branch.

Section 9. Air Ambulance Services Communications. (1) An air ambulance service shall comply with FAR specifications for flight fol-

lowing and position plotting by a provider based or maintained communication center. The communication center shall be equipped with communications equipment and staffed by a properly trained ACS to receive and coordinate all calls as provided for by FAR. If providing fixed wing service, this requirement may be met by filing an FAA flight plan.

(2)(a) Rotor wing air ambulance service aircraft shall have radio capability to communicate:

1. Ground-to-air;
2. Air-to-air; and
3. Air-to-ground.

(b) Rotor wing aircraft radio capability shall include two (2) way radio communication equipment that is:

1. Compatible with the statewide ambulance-to-hospital emergency radio communication system; and
2. Capable of communicating with:
  - a. Ground personnel to properly coordinate the landing;
  - b. Physician medical director or medical control physician directing patient management; and
  - c. Primary medical responders on the ground who may be caring for the patient.

(3)(a) Fixed wing air ambulance service aircraft shall have radio capability to communicate:

1. Ground-to-air;
2. Air-to-air; and
3. Air-to-ground.

(b) Fixed wing aircraft radio capability shall include two (2) way radio communication equipment capable of communicating with ground personnel to properly coordinate the landing.

Section 10. Air Ambulance Records and Reports. (1) An air ambulance provider shall keep accurate records and reports concerning the transportation of an emergency patient, which shall be maintained at the headquarters of the licensee and shall be available for periodic review as deemed necessary by the licensing agency.

(2) A provider shall provide a full record to the receiving facility of any treatment administered at the pickup location or during transit. Required records and reports shall include a provider specific transport record based upon an approved data set that is acceptable to the licensing agency.

(3) Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age.

(4) Personnel files on each attendant shall be maintained for:

(a) Five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

(b) Five (5) years following the demise of the employee.

(5) Individual attendant personnel files shall contain:

(a) A résumé of an employee's training and experience; and

(b) Current credentials including proof of EMT or certified paramedic licensure with corresponding numbers and expiration dates, or nursing or physician license;

(c) A preemployment criminal records check for each medical attendant added to the service after the effective date of this administrative regulation;

(d) Health records to include:

1. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

2. Health records which meet the requirements of KRS 216B.410(3).

(6) An air ambulance provider shall maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the air ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Written documentation of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines;

2. A written plan for response to, and the protection and decontamination of, the patient, aircraft, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A written plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A written plan for the quality assessment of patient care including a periodic review of run report forms, and evaluation of staff performance related to patient care;

(f) Written policies and procedures concerning:

1. Aircraft maintenance;
2. Standard operating procedures (SOPS);
3. Patient protocols;
4. Transport response and limitations; and
5. Patient destination.

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

(a) 2000, United States Department of Transportation Federal Aviation Regulations and Airman's Information Manual, Parts 43, 91, and 135;

(b) 1995, United States Department of Transportation Advisory Circulars No. 135-14A, Emergency Medical Services: Helicopters (EMS:H); and

(c) Kentucky Board of Emergency Medical Services Form No. 1.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moloney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the licensure and operation requirements for air ambulance providers.

(b) The necessity of this administrative regulation: Provides specific licensure and operation requirements for air ambulance providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524(1) requires board to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It identifies specific licensure and operation requirements for air ambulance providers.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 13 air ambulance service providers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It identifies specific licensure and operation requirements for air ambulance providers.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not applied because all air ambulance services are treated equally.

#### 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. Any local government that administers Air ambulance service providers.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that administers Air ambulance service providers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

#### STATEMENT OF EMERGENCY

202 KAR 7:595E

This emergency administrative regulation sets forth the licensure and operation requirements for first response provider. It has been determined that an emergency exists because authority for the Emergency Medical Services Program has been transferred to the Kentucky Board of Emergency Medical Services to be effective no later than April 1, 2001. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 202 KAR 7:595 shall be filed with the Regulations Compiler at the same time as 202 KAR 7:595E.

PAUL E. PATTON, Governor

MARK K. BAILEY, Chairperson

#### KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (New Emergency Administrative Regulation)

202 KAR 7:595E. Advanced life support (ALS) medical first response providers.

RELATES TO: KRS 311.652 to 311.658

STATUTORY AUTHORITY: KRS 311.6524

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6524 directs the Kentucky Board of Emergency Medical Services to promulgate administrative regulations for the licensing, inspection, and regulation of medical first response providers. This administrative regulation provides for the minimum licensing requirements for ALS

medical first response providers.

Section 1. Definitions. (1) "ALS" means the utilization of certified and licensed emergency medical professionals to provide advanced prehospital medical care such as:

(a) Advanced airway management such as endotracheal intubation;

(b) Cardiac monitoring, interpretation, defibrillation, cardioversion, and pacing; and

(c) Administration of pharmaceuticals and intravenous fluids under the authority of a physician.

(2) "Base station" means the primary business location of a provider where administrative and personnel records are kept.

(3) "Board" means the Kentucky Board of Emergency Medical Services.

(4) "Class I ALS ground ambulance provider" means an ambulance provider licensed which meets the requirements for an advanced life support service.

(5) "Continuing education" means the provision of information or training within the scope of an individual's level of certification or licensure, which is required for recertification or relicensure.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting emergency medical services; and

(b) Contact is made with the appropriate responding provider for direction to the patient scene.

(7) "Employee" means medical personnel who may be paid or volunteer, full time or part time.

(8) "Mutual aid agreement" means a formal written agreement with another licensed provider or licensed ALS ground ambulance provider for backup assistance in the event that the provider is unable to respond to an emergency request for assistance or the emergency exceeds the capacity of the provider.

(9) "Paramedic" means a person licensed pursuant to KRS 311.652 through 311.658.

(10) "Provider" means an ALS medical first response provider licensed to provide ALS care.

(11) "Response time" means the time from which a call is dispatched, until a provider arrives at the patient scene.

(12) "Service" means an ALS medical first response provider licensed to provide ALS care.

(13) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

Section 2. Licensing Requirements. The following licensing requirements shall apply to ALS medical first response providers:

(1) A person shall not provide, advertise, or profess to engage in the provision of ALS medical first response in Kentucky unless:

(a) An on-site inspection by a representative of the board has determined that the ALS medical first response provider has complied with the requirements of Section 3 of this administrative regulation; and

(b) Has been granted a license to operate a Kentucky ALS medical first response service.

(2) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3)(f); or

(b) A provider serving during a major catastrophe;

(3) A provider shall:

(a) Comply with applicable local, state, and federal requirements relating to ALS medical first response providers; and

(b) Be established and operated by one (1) of the following organizations:

1. A city;

2. A county;

3. State government;

4. An ambulance taxing district established under KRS 108.100;

5. A fire department established under KRS Chapter 75;

6. A rescue squad established under KRS Chapter 39;

7. A licensed hospital or primary care center which:

a. Has an emergency room equipped and staffed to evaluate and

treat patients with life threatening conditions; and

b. Has a radio communication system which is compatible with the radio system used by the service that will allow the provider to communicate with the transporting ambulance to provide medical direction or receive prearrival information; or

8. A corporation which is operating under contract or affiliation agreement with at least one (1) of the entities specified in this paragraph.

(4) The license shall be displayed in a prominent place at the service base station.

(5) The following information shall be included on the license:

(a) Identity and location of the base station;

(b) Designation of the geographic area to be served by the licensee.

1. A service area shall not exceed a fifteen (15) mile radius from the base station allowing for a twenty (20) minute initial response time from a base station for ninety-five (95) percent of the calls received requesting assistance.

2. This does not preclude the service from providing mutual aid in unusual circumstances such as disaster assistance outside the geographic service area.

(6) An applicant for a license shall file a "Kentucky Application for an ALS Medical First Response Provider".

(7) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with the applicable requirements of this administrative regulation.

(8) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the board, unless otherwise exempted by statute.

(9) A license shall expire one (1) year following the date of issuance.

(10) A license shall be renewed upon:

(a) Payment of the prescribed fee; and

(b) Verification of compliance with the provisions for licensing through an on-site inspection conducted by a representative of the board in accordance with the procedures established by Section 3 of this administrative regulation.

(11) A license to operate shall be issued only for the person, service area, and premises listed in the application.

(12) A license shall not be transferable.

(13)(a) A new application shall be filed if a change of ownership occurs.

(b) A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the:

1. Assets;

2. Capital stock; or

3. Voting rights of a corporation is:

a. Purchased;

b. Transferred;

c. Leased; or

d. Acquired by comparable arrangement by one (1) person from another.

(14) Upon filing a new application for a license due to change of ownership:

(a) The new license shall be automatically issued for the remainder of the current licensure period; and

(b) No additional fee shall be charged for the remainder of the licensure period.

(15) A provider shall notify the board of any changes in the information contained in the application form.

Section 3. Licensing Inspections. (1) Compliance with licensing under this administrative regulation shall be ascertained through on-site inspections of the provider by representatives of the board.

(2) Representatives of the board shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection shall be transmitted in writing to the provider by the board.

(4)(a) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the board within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5) Following a review of the plan, the board shall notify the provider in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.

(a) The board may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable:

1. The board shall specify why the plan cannot be accepted; and

2. The provider shall modify or amend the plan and resubmit it to the board within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted for a:

(a) Complaint allegation;

(b) Follow-up visit; and

(c) Relicensing inspection.

(7) The board may:

(a) Deny;

(b) Revoke;

(c) Modify; or

(d) Suspend the license of a provider which:

1. Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

2. Fails to eliminate or correct regulatory violations;

3. Falsifies an application for licensing;

4. Changes a license issued by the board;

5. Attempts to obtain or obtains a license by:

a. Fraud;

b. Forgery;

c. Deception;

d. Misrepresentation; or

e. Subterfuge; or

6. Provides false or misleading advertising;

7. Falsifies, or causes to be falsified:

a. A patient record; or

b. Service run report;

8. Provides an unauthorized level of service;

9. Has a history of staff violations which have resulted in disciplinary action;

10. Fails to provide the board or its representative with information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

a. KRS 211.950 to 211.958;

b. KRS 211.960 to 211.968;

c. KRS 211.990(5);

d. KRS Chapter 2168; and

e. KRS 311.652 through 311.658; or

f. Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in subsection (11) of this section.

(8) If the board has reasonable cause to believe that the service creates imminent danger to the health and safety of the public, the board may issue an order directing a provider to immediately cease and desist providing services.

(9) The board may:

(a) Deny;

(b) Revoke;

(c) Modify; or

(d) Suspend the license of a provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or

2. Submitting fraudulent or misleading claims for reimbursement to:

(a) An individual;

(b) A private insurance company; or

(c) A governmental agency.

(10) The board shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with the provisions of 202 KAR 7:150.

(11) The fee for initial and annual renewal of licensure, shall be as follows:

(a) A nonvolunteer service: eighty (80) dollars;

(b) A volunteer service in which a majority of the runs are made by an attendant who does not receive compensation: twenty (20) dollars.

#### Section 4. ALS Medical First Response Operating Requirements.

(1) Except as provided in this section and in Section 9 of this administrative regulation, a provider shall provide ALS emergency care on a twenty-four (24) hour, seven (7) days a week, basis.

(2) This provision may be met through a call system or by a written mutual aid agreement with a Kentucky licensed Class I ALS ground ambulance provider or another ALS medical first response provider.

(3) The board may grant a waiver of subsection (1) of this section to a new ALS medical first response provider serving an area where ALS services have not been previously available.

(4) A waiver shall not exceed a period of twelve (12) months.

(5) The following priorities shall be followed for establishing a mutual aid agreement with another provider:

(a) An ALS medical first response provider or Class I ALS ground ambulance provider which is licensed to serve the same service area;

(b) An ALS medical first response provider or Class I ALS provider ground ambulance provider which serves part of the same service area or a contiguous service area.

(6) If a provider is unable to respond to an emergency call, the provider shall activate their mutual aid agreement with the closest available ALS medical first response provider or Class I ground ambulance provider.

(7) An ALS medical first response provider shall enter into an affiliation agreement with at least one (1) Class I provider which serves all or part of the ALS medical first response provider's service area to:

(a) Jointly respond to prehospital emergency scenes;

(b) Provide coordinated patient care at the scene; and

(c) Provide patient transportation.

(8) The affiliation agreement shall be in writing and shall address the following:

(a) Level of training and provision for joint in-service training where appropriate for personnel of both providers;

(b) Response vehicles and ambulances, including unit identifiers and the station or location from which the vehicles will be operated;

(c) How and in what manner the mutual aid agreement shall be activated including dispatch and notification procedure;

(d) Radio and other communication procedure between the medical first response provider and the ambulance provider;

(e) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(f) Exchange of patient information, records, and reports; and

(g) Terms of the agreement including effective date and provision for amendment or termination.

(9) A vehicle used in the provision of ALS medical first response services shall:

(a) Be maintained in proper mechanical operating condition with documentation maintained attesting to proper repair and condition;

(b) Comply with KRS 189.910 through 189.950 regarding the use of lights and sirens.

(10) The name of the ALS medical first response provider shall appear on the exterior surface of the vehicle.

(11) A preventive maintenance program for each vehicle and its equipment shall be developed and implemented to keep them in optimum working order.

(12) Documentation shall be maintained by the provider to support evidence of inspection, calibration, maintenance or operation of the vehicle and its equipment in accordance with:

(a) The requirements of the manufacturer;

(b) Other regulatory agencies; or

(c) The maintenance schedule of the provider.

(13) The interior of the vehicle and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by an emergency situation.

(14) A vehicle used to provide medical first response service shall be insured by the employee or through the insurance policies of the medical first response provider.

(15) A communication system shall be developed, coordinated, and maintained by each provider; and shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the provider shall have a signed affiliation agreement with the dispatch center for coordination

of emergency calls;

(b) A medical first response vehicle shall be equipped with:

1. Two (2) way radio communication equipment; and
2. One (1) portable communication device per vehicle capable of contacting:

- a. The dispatch center;
  - b. An affiliate Class I ground ambulance service; and
  - c. The receiving hospital;
- (c) A provider shall:

1. Have a plan to assure that all calls are promptly answered and dispatched in an expedient manner in accordance with subsection (1) of this section; and
2. Provide orientation to all response personnel related to communication protocols that have been established by the service.

Section 5. ALS Medical First Response Personnel. (1) An ALS medical first response service shall be staffed to provide on each run at least:

(a) One (1) paramedic licensed by the Kentucky Board of Emergency Medical Services; or

(b) One (1) physician licensed by the KBML who has evidence on file of successful completion within the last two (2) years of advance cardiac life support (ACLS) training sponsored by the American Heart Association.

(2) Personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(3) The driver on each medical first response run shall:

- (a) Have a current motor vehicle operator's license;
- (b) Have at least two (2) years of licensed driver or operator experience;

(c) Complete a defensive driving training program that is developed by the provider or in conjunction with another provider or organization which has developed a program.

(4) The defensive driving training program shall consist of at least four (4) hours and shall include:

- (a) A review of driving a vehicle under emergency conditions;
- (b) A review of KRS 189.910 through 189.950 regarding emergency vehicles.

(c) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

(d) A review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

Section 6. Equipment and Supplies. (1) ALS medical first response personnel shall carry and maintain in full operational order the following minimum BLS equipment and supplies:

(a) One (1) portable, manual, or electric suction with two (2) yan-kauer and 6F, 8F, 10F, and 14F flexible catheters;

(b) Oropharyngeal and nasopharyngeal airways, set of six (6) different sizes;

(c) A portable oxygen tank with a filled, minimum size D, secured spare portable cylinder;

(d) Masks and nasal cannulas, disposable oxygen delivery devices with supply tubing;

(e) Disposable, clear faced bag valve mask ventilation units in 250 ml and 1000 ml with oxygen reservoir with adult and infant size masks capable of use with oxygen;

(f) One (1) bite stick;

(g) Adult, obese adult, child and infant sphygmomanometer cuffs and stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement;

(h) Rigid, stiff cervical collars in large, medium, small, no-neck and pediatric sizes;

(i) One (1) penlight;

(j) One (1) flashlight;

(k) Two (2) sterile universal dressings ten (10) inches by thirty (30) inches;

(l) Occlusive dressings or sterile foil;

(m) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(n) Six (6) soft roller self-adhering bandages, various sizes;

(o) Two (2) rolls of adhesive tape;

(p) Cold pack, chemical;

(q) Four (4) triangular bandages;

(r) Sterile obstetrical (OB) kit;

(s) Bandage shears;

(t) Blanket;

(u) Thermometer;

(v) Disposable gloves;

(w) One (1) clear eye protection per crew member;

(x) One (1) face mask per responding crew member;

(y) One (1) protective gown or coat per responding crew member;

and

(z) One (1) sharps container per vehicle and three (3) red disposable biohazard bags.

(2) At the point of patient contact, an ALS medical first response provider shall carry on each vehicle the supplies and equipment as provided for in protocols established in Section 8(3) of this administrative regulation, and shall include the following:

(a) An endotracheal intubation set consisting of:

1. Laryngoscope handle compatible with adult and pediatric blades;

2. Straight laryngoscope blades in sizes 0, 1, and 2;

3. Curved laryngoscope blades in sizes 3 and 4;

4. Extra batteries and bulbs for blades and handles; and

5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes:

a. Uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and

b. Cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0;

(b) Stylettes in adult and pediatric sizes;

(c) Magill forceps in adult and pediatric sizes;

(d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(f) A portable monitor defibrillator that:

1. Provides a visual display of cardiac electrical activity;

2. Provides a hard copy of cardiac electrical activity;

3. Delivers direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. May be operated from internal rechargeable batteries;

6. Has transthoracic pacing, and synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administrative regulation;

7. Has a patient monitoring cable which has the following accessories:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout.

(g) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;

(h) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;

(i) Containers for the collection of blood samples;

(j) Tourniquet for use with venipuncture procedure;

(k) Dextrostix or equivalent for the measure of blood glucose levels;

(l) Disposable, individually packaged antiseptic wipes;

(m) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;

(n) Intravenous catheter over needle devices in twelve (12) to twenty-four (24) gauge;

(o) Butterfly needles in nineteen (19) and twenty-three (23) gauge;

(p) Intraosseous needles;

(q) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;

(r) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18F adult, and sizes 50 or 60cc catheter tipped syringes or equivalent; and

(s) Infant or neonate suction apparatus.

(3) A provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 8 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) A provider which stores and utilizes controlled substances shall:

(a) Have protocols approved by the Board's Drug Control Branch; and

(b) Shall store controlled drugs and substances in a locked compartment or equivalent approved by the board.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (s) of this section, and supplies and equipment listed in this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a provider to maintain the equipment required in this section if the equipment is not required by the medical protocols of the provider established in Section 8 of this administrative regulation.

(6) Drugs, IV fluids, medical devices and batteries shall be stored and maintained in accordance with manufacturer's recommendations.

Section 7. Extrication Equipment. For response to trauma scenes, a provider shall:

(1) Have an affiliation agreement to provide extrication equipment with:

(a) A fire department;

(b) Rescue squad; or

(c) A Class I ambulance provider; or

(2) Provide and maintain in full operational order the extrication equipment required for Class I ground ambulance services in 202 KAR 7:580, Section 7.

Section 8. Medical Director. (1) A medical first response provider shall have a written agreement with a physician medical director.

(2) The medical director shall:

(a) Be a physician licensed by the KBML;

(b) Have qualifications which have been reviewed by the board;

(c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education; or

(d) Be a physician who holds, or is in the process of completing within one (1) year, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support; or

(e) Have on file written approval from the KBEMS;

(f) Assume responsibilities in accordance with administrative regulations;

(g) Assume other responsibilities as agreed upon between the medical director and the director of the service.

(3) The qualifications of the medical director and the medical protocols shall be approved by the board only after being reviewed by the Kentucky Emergency Medical Services and its Medical Standards and Delegated Practice Committee.

Section 9. Specialized ALS Medical First Response Providers. (1) The board shall license a specialized ALS medical first response provider such as those based at:

(a) An industry;

(b) An amusement park;

(c) A college or university campus;

(d) A special event; or

(e) A sports stadium.

(2) A specialized ALS medical first response provider shall not provide emergency prehospital care to the general public other than employees or patrons normally served by the entities listed in subsection (1) of this section.

(3) A specialized ALS medical first response provider which complies with Sections 1 through 9 of this administrative regulation may, with prior approval by the board, be allowed variances as provided in this section.

(4) A specialized ALS medical first response license shall specify the limitations of the provider which shall be approved by the board.

(5) In reference to Section 4(1) of this administrative regulation, a

specialized ALS medical first response provider shall not be required to provide emergency care on a twenty-four (24) hour, seven (7) days a week basis.

(6) In reference to Section 4(7) of this administrative regulation, a specialized ALS medical first response provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(7) A specialized ALS medical first response provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, and 7 of this administrative regulation, with variances approved by the board in accordance with approved medical protocols in Section 8 of this administrative regulation.

(8) A specialized provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the board.

Section 10. ALS Medical First Response Management Requirements. A provider shall:

(1) Establish lines of authority and an organizational chart to include the designation of:

(a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) A provider shall develop a run form or an electronic equivalent reporting mechanism to be completed for each run where contact with a patient is made. The reporting mechanism shall contain the Kentucky emergency medical services (EMS) data elements for ALS medical first response providers.

(3) A copy of the data elements for each run shall be:

(a) Provided to the affiliate ambulance service which transports the patient;

(b) Kept and available for inspection or reporting to the board according to guidelines established by the board and in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

(c) Forwarded to the board within thirty (30) days following the end of the month in which the run was made. The data may be reported on a form or in an electronic equivalent format which is compatible with the board's EMS information system.

(4) Employee files shall be maintained for:

(a) A minimum of five (5) years following termination, or retirement from employment; or

(b) Five (5) years following the demise of the employee.

(5) Individual personnel files shall contain evidence of:

(a) Training;

(b) Experience; and

(c) Current credentials including proof of:

1. Paramedic licensure with corresponding number and expiration date; or

2. Physician's license;

(d) Current and valid driver's license;

(e) A reemployment criminal and Department of Transportation driver's records check for each employee;

(f) Health records to include:

1. Written evidence of a reemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

2. Health records including records including records of all illnesses or injuries occurring while on duty.

(6) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Mutual aid agreements and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be

provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS), hazardous materials awareness training, and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, equipment, and staff if called upon to respond to a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Standard operating procedures (SOPS);
2. Patient protocols; and
3. Medical response.

Section 11. Incorporation by Reference. (1) "Kentucky Board of Emergency Medical Services Form No. 1" is incorporated by reference.

(2) The material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK K. BAILEY, Chairperson

APPROVED BY AGENCY: February 13, 2001

FILED WITH LRC: February 15, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Moleney, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-8581

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides minimum licensing requirements for ALS medical first response providers.

(b) The necessity of this administrative regulation: Provides minimum licensing requirements for ALS medical first response providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.6524(1) requires board to promulgate administrative regulations for licensing, inspecting, and regulating ambulance providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides minimum licensing requirements for ALS medical first response providers.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 130 ambulance services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Provides minimum licensing requirements for ALS medical first response providers.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not applied because all ALS medical first responder services are treated equally.

#### 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. Any local government that administers First Response ambulance service provider.

3. State the aspect or service of local government to which this administrative regulation relates. Any local government that administers First Response ambulance service provider.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: Any additional administrative costs resulting from compliance with administrative regulations. Amount unknown.

#### STATEMENT OF EMERGENCY 301 KAR 2:132E

This emergency administrative regulation implements portions of HB 357 of the 2000 General Assembly. An emergency administrative regulation is necessary because of a new state law. The law allows two (2) commission permits to be donated to nonprofit wildlife conservation organizations for the first elk hunt. This administrative regulation gives the authority for those individuals to participate in the hunt and establishes the parameters of the hunt. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for 301 KAR 2:132 was filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

#### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Emergency Amendment)

##### 301 KAR 2:132E. Elk depredation permits and quota hunts.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390, 150.395, 150.990(11)

STATUTORY AUTHORITY: KRS 150.177, 150.390(3), (4)

EFFECTIVE: January 12, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.390(3) authorizes the department to promulgate administrative regulations stipulating the conditions under which depredation permits for elk may be issued. This administrative regulation details procedures to be used to obtain a depredation permit to control elk causing property damage. KRS 150.390(4) also allows the department to establish elk hunting seasons and requirements. This administrative regulation details the specifics of the elk hunting season. KRS 150.177 allows the commission to establish the parameters of the use of the elk permits donated to a wildlife conservation organization.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam. The main beam shall count as one (1) point.



(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Elk" means a member of the species *Cervus elaphus*.

(4) "Restoration area" means the Kentucky counties east of and including Bell, Knox, Clay, Perry, Breathitt, Magoffin, Johnson and Martin.

(5) [(2)] "Wild elk" means:

(a) An elk translocated and released by the department; or

(b) The progeny of an elk translocated and released by the department.

#### Section 2. Elk Damage Control. [A person shall:]

(1) A person shall not kill or attempt to take molest a wild elk that is causing property damage, except as specified in [Section 3(3)] of this administrative regulation.

(2) A person shall contact the department if he wants depredating wild elk removed from his property.

(3) [Section 3:] Upon receipt of a damage complaint, the department shall:

(a) [(1)] Verify that wild elk are causing the damage; and

(b) Remove, destroy or authorize the destruction of the elk by the property owner or his designee;

(c) The property owner or designee shall immediately contact the department upon destruction of the elk.

(4) [(2)(a)] If inside the restoration area, remove the elk; or

(b) If outside the restoration area:

1. Remove the elk; or

2. Authorize the property owner or his designee to destroy the elk.

Section 4:] A person authorized to destroy an elk under the provisions of this section [Section 3 of this administrative regulation] shall not:

(a) [(1)] Move the elk until he has attached a tag provided by the department to the carcass; and

(b) [(2)] Remove the tag until the carcass is processed.

Section 3. Quota Elk Hunts. (1) Only persons whose names are selected pursuant to this administrative regulation or a person who receives or is transferred a special commission permit issued pursuant to 301 KAR 3:100 shall participate in either of the elk quota hunts as assigned.

(2) Said individual may be accompanied by up to two (2) other individuals who may assist in the retrieval of the harvested elk.

(3) Quota hunt.

(a) There shall be a quota hunt beginning the first Saturday in October, for seven (7) consecutive days for antlered elk only.

(b) There shall be a second quota hunt beginning the first Saturday in December, for seven (7) consecutive days for antlerless elk only.

(4) Limits.

(a) An elk hunter shall only take one (1) antlered elk in the October quota hunt.

(b) An elk hunter shall only take one (1) antlerless elk in the December quota hunt.

(5) Illegal hunting equipment. A person shall not use or possess while elk hunting:

(a) A device capable of taking an elk except a firearm, crossbow or archery equipment;

(b) A modern firearm of less than .27 caliber;

(c) A muzzle-loading firearm of less than .50 caliber;

(d) A shotgun of less than twenty (20) gauge;

(e) A handgun;

(f) Rimfire ammunition;

(g) A fully-automatic firearm;

(h) A firearm with a magazine capacity greater than ten (10)

rounds;

(i) Steel jacketed ammunition;

(j) Tracer bullet ammunition;

(k) A shotgun shell containing more than one (1) projectile.

(l) A broadhead smaller than seven-eighths (7/8) inch wide;

(m) A barbed broadhead;

(n) A crossbow without a working safety device;

(o) A chemically treated arrow; and

(p) An arrow with a chemical attachment;

(6) Hunter orange.

(a) During the elk quota hunts, elk hunters or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back and chest;

(b) The hunter orange portions of a garment worn to fulfill the requirements of this section:

1. May display a small section of another color; and

2. Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(c) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

(7) Hunter requirements.

(a) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the juvenile's firearm.

(b) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(c) An elk hunter or any person accompanying the elk hunter:

1. Must attend a mandatory training seminar and tour of the assigned area to be conducted prior to the hunt. Failure to attend will result in the disqualification of the person from participating in the hunt.

2. May be in the field, woods or stands before or after daylight hours, but shall not take elk except during daylight hours;

3. Shall not use dogs;

4. Shall not use bait;

5. Shall not drive elk from outside his assigned area;

6. Shall not take swimming elk;

7. Shall not use electronic calls;

8. Shall not take an elk while in a vehicle or boat, or on horseback.

A hunter may use a vehicle as a hunting platform if he has a disabled hunting exemption permit issued by the department.

9. Shall immediately after taking an elk, attach the tag portion of the permit to the carcass before moving the carcass.

10. Must check in and out of the assigned area daily with the area hunt manager, and must check any harvested elk with area hunt manager on the day that the elk was taken.

11. A person checking in for a quota hunt shall show his Social Security number, and valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license.

12. In an individual is drawn and fails to appear at the mandatory seminar or hunt, that individual is ineligible to be drawn in any future hunt for five (5) years.

Section 4. Quota Hunt Application Procedures. (1) A person shall apply for a quota hunt drawing by purchasing an application from the department between December 1 and May 31 and following the below specified procedures:

(a) Providing his Social Security number or driver's license number; and

(b) Paying a nonrefundable ten (10) dollar application fee for each application by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person shall not apply more than one (1) time per application period.

(3) The department shall select hunters by a random drawing of all valid applicants. Up to ten (10) percent of those drawn may be non-residents as defined in KRS 150.010.

(a) Applicants must have purchased a valid Kentucky hunting license prior to the drawing or be exempt under KRS 150.170.

(b) If the selected individual does not have a valid Kentucky hunting license, or is not otherwise license exempt, that person shall be disqualified and another selected.

(4) If any individual who was drawn is disqualified for any of the reasons specified in this administrative regulation, an alternate will be redrawn from the undrawn applicants.

(5) The commissioner may:

(a) Extend the application deadline if technical difficulties with the

application system prevent applications from being accepted for one (1) or more days during the application period, and

(b) May authorize the on-site sale of applications during promotional events or festivals.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

TOM BAKER, Chairman

APPROVED BY AGENCY: January 11, 2001

FILED WITH LRC: January 12, 2001 at 1 p.m.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Fields

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation defines antlered and antlerless elk, it clarifies the procedures for handling elk causing damage, it established the parameters for the elk quota hunt and sets up the application process to participate in the hunt, including the participation in that hunt by those holding permits given by the commission.

(b) The necessity of the administrative regulation: This administrative regulation is necessary in order to manage any rogue elk and to establish the elk quota hunt requirements and application process.

(c) How does this administrative regulation conform with the authorizing statute. This is the very type of administrative regulation that is necessary to conform with the authorizing statute. It fleshes out the requirements for the elk quota hunt process and the application procedure.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation is necessary to establish the requirements of the quota elk hunt and the application process, as well as clarify other aspects of managing the elk herd.

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

(a) How the amendment will change the existing administrative regulation: This amendment defines antlered and antlerless elk, it clarifies the procedures for handling elk causing damage, it established the parameters for the elk quota hunt and sets up the application process to participate in the hunt, including the participation in that hunt by those holding permits given by the commission.

(b) The necessity of the amendment to this administrative regulation. This administrative regulation is necessary in order to manage any rogue elk and to establish the elk quota hunt requirements and application process.

(c) How does the amendment conform to the authorizing statutes. This is the very type of administrative regulation that is necessary to conform with the authorizing statute. It fleshes out the requirements for the elk quota hunt process and the application procedure.

(d) How the amendment will assist in the effective administration of the statutes. This administrative regulation is necessary to establish the requirements of the quota elk hunt and the application process, as well as clarify other aspects of managing the elk herd.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: The amendments to this regulation concern 2 major topics. The first is the clarification of how elk that are causing damage are to be handled. There were no significant changes to this portion, only clarification. This section affects all living in the area where elk have been restored. The second section concerns the procedures for applying for the elk quota hunt and the requirements for the hunt itself. Since this is the first elk hunt in Kentucky in 150 years, the exact impact is not known. However, it is hoped that many Kentuckians and nonresidents will desire to participate in the hunt. This will hopefully increase the business the groceries and mini-marts, etc, who are KDSS agents. In addition, the elk herd itself, and this subsequent hunt, will increase tourism to the elk restoration area. Tourism has already increased through elk watching tours. It is hoped that the continued publicity through this hunt will only increase tourism. Any hunter who wishes to be included in the draw, must pay the \$10 application fee, but he or she will receive a patch indicating that he has participated in the first quota elk

hunt draw. Since participation is completely voluntary, it will only impact those who wish to participate. In summary, it will affect local businesses, KDSS agents, local residents and hunters who choose to participate.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: As stated above, local residents should not be impacted by the clarifications in the elk control process. Local businesses should benefit from increased tourism from the elk hunt and other elk related activities. Hunters will be impacted by having an elk hunt to apply for.

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

(a) Initially: It is unknown exactly what the public response will be, therefore estimates are not possible. However, no additional staff will be required. There will be increased publications. Printing costs, the cost of the patch with shipping and handling and general elk and hunt management are the cost associated with this program.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. All costs associated with the establishing of the elk draw and quota hunt, such as publications and enforcement, will be covered by the fee to enter the draw.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: It only establishes a fee for entering the draw for the first elk hunt.

(9) TIERING: Is tiering applied? Tiering was not used. Limits are applied equally to all persons.

#### STATEMENT OF EMERGENCY 787 KAR 1:230E

The Kentucky Revenue Cabinet now processes the quarterly unemployment insurance tax reports for the Division of Unemployment Insurance. These reports are imaged by the Modernized Front End System (MFE). Prior to the conversion to electronic imaging, the Division of Unemployment Insurance manually processed each piece of mail and retained the envelope bearing the postmark, when the report was filed after the due date. The cost of imaging and storing the electronic image of the envelope could not be justified. Consequently, Revenue neither retains nor stores the envelopes. Therefore, with the absence of the postmark, we must amend the administrative regulation relating to receipt. Revenue makes images of the reports available to the Division of Unemployment Insurance and deposits the accompanying tax receipts. These monies are then transferred to the Kentucky Unemployment Trust Fund in Washington, D.C. Monies including penalties and interest are later drawn from that fund and returned to Kentucky. The Division of Unemployment Insurance proposes to adopt the same approach that Revenue uses to calculate the date of receipt. With this approach, the employers will effectively be granted additional days to have their report considered timely. Consequently, there probably will be some decline in penalty receipts. We urgently need this administrative regulation in force to properly address the reports for the filing of fourth quarter 2000, which are due in January 2001. The lack of emergency status will result in the loss of penalty and interest funds for Kentucky. An ordinary administrative regulation is not sufficient because it would not be effective until March 2001 and the Division of Unemployment Insurance would lose penalty and interest receipts for an additional quarter. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 787 KAR 1:230 was filed with the Regulations Compiler on January 26, 2001.

PAUL PATTON, Governor

MARGARET WHITTET, Commissioner

CABINET FOR WORKFORCE DEVELOPMENT  
Department for Employment Services  
Division of Unemployment Insurance  
(Emergency Amendment)

787 KAR 1:230E. Due dates.

RELATES TO: KRS 341.262, 341.300, 341.430(2), 341.450(1)  
STATUTORY AUTHORITY: KRS 151B.020, 341.115  
EFFECTIVE: January 30, 2001

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

Section 1. Except as provided in Section 2 of this administrative regulation, a contribution payment, report, protest, or appeal shall be considered received by the department as of the date it is:

- (1) Delivered to [any office of] the department; or
- (2) Deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt.

Section 2. Any report or payment received and processed by an agent of the Department for Employment Services shall be considered received by the department as of the date recorded by the agent and transmitted to the department. Any report or payment delivered to an agent of the Department for Employment Services by mail or commercial postal service shall be considered received five (2) business days prior to the date of delivery to the agent. For purposes of this administrative regulation a business day is any day the department's offices are open.

Section 3. When a due date falls on a day the office of the department is closed, the next day the office is opened shall be considered the due date.

MARGARET WHITTET, Commissioner

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: January 30, 2001 at 8 a.m.

CONTACT PERSON: Margaret Whittet, Commissioner, Cabinet for Workforce Development, Department for Employment Services, 275 East Main Street, 2nd Floor, West, Frankfort, Kentucky 40621, Telephone: (502) 564-5331, Fax: (502) 564-7452.

REGULATORY IMPACT ANALYSIS

Contact: Margaret Whittet, Commissioner, Workforce Development Cabinet

- (1) Provide a brief summary of: N/A Not a new regulation. See (2) below.

- (a) What this administrative regulation does:
- (b) The necessity of this administrative regulation:
- (c) How this administrative regulation conforms to the content of the authorizing statute:

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

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

(a) How the amendment will change this existing administrative regulation: This amendment relates to unemployment insurance tax reports and payments where the envelope and the accompanying postmark are not considered in determining timeliness. Instead the imaging system will date the report or payment and give the filing party consideration for the time lost in delivery of the mail.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to automation of processing of unemployment insurance tax reports and payments to give the filing party consideration for time lost in delivery of mail.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is in conformity with authorizing statute of KRS 341.115.

(d) How the amendment will assist in the effective administration of the statutes: an imaging system automatically date the unemployment insurance tax reports or payments where the envelope and the accompanying postmark are not considered in determining timeliness. The amendment will clarify that a report or payment sent by mail or commercial postal service shall be considered received by the department five business days prior to the date of delivery to the agent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 89,000 employers who are subject to the requirements of KRS Chapter 341.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The imaging system will date the report or payment and give the filing party consideration for the time lost in delivery of the mail.

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

(a) Initially: No cost to implement.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A with respect to implementation. Federal funds through the U.S. Department of Labor for enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? No. The proposed administrative regulation will affect all entities equally.

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: Local government entities are generally subject to the reporting provisions of KRS Chapter 341 and thus are subject to the provisions of this administrative regulation defining received date for reporting purposes.

3. State the aspect of service of local government to which this administrative regulation relates: Unemployment insurance payroll reporting, tax or benefit reimbursement payments, and appeals of decisions of the department affecting their liability.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation in itself has no fiscal impact on local governments. Governmental entities failing to file reports and make payments required under KRS Chapter 341 in a timely manner as defined by this administrative regulation may be subject to penalty and interest provisions set forth in the law.

STATEMENT OF EMERGENCY  
804 KAR 4:360E

2000 Senate Bill 247 amended KRS 242.085(6) to permit any city or county in which prohibition had not been repealed to hold a local option election to permit alcohol by the drink sales in restaurants that seat a minimum of 100 patrons and derive a minimum of 70 percent of gross receipts from the sale of food. There exists an imminent threat to the economic welfare and viability of cities of the fifth and sixth class if these licenses do not issue. This new administrative regulation es-

establishes a fee to enable the department to issue licenses to promote the economic development in these cities and is required immediately. The fee for a limited restaurant drink license to be issued in any fifth or sixth class city shall be the sum of the fee specified in KRS 243.030 for a fourth class city restaurant drink license and the fee for a malt beverage retail license specified in KRS 243.040. The notice of intent to promulgate the administrative regulation and the ordinary administrative regulation will be filed with the Regulations Compiler on the same date.

PAUL E. PATTON, Governor  
RICHARD N. JOHNSTONE, Commissioner

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Alcoholic Beverage Control  
(New Emergency Administrative Regulation)**

**804 KAR 4:360E. Restaurant drink licenses for fifth and sixth class cities.**

RELATES TO: KRS 243.030(42), 243.040(15)  
STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 242.185(6) provides for a limited local option election in any city or county in which prohibition is in effect, to approve the sale of alcoholic beverages by the drink in restaurants that have seating for at least 100 persons and that derive at least seventy (70) percent of gross revenues from the sale of food. Although there is presently a restaurant drink license created by statute, there is presently no fee authorized in the statute relating to a fifth or sixth class city.

Section 1. The fee for a limited restaurant drink license to be issued in any fifth or sixth class city shall be the sum of the fee specified in KRS 243.030 for a fourth class city restaurant drink license and the fee for the malt beverage retail license specified in KRS 243.040.

RONALD B. MCCLOUD, Secretary  
RICHARD N. JOHNSTONE, Commissioner  
REBECCA W. GOODMAN, General Counsel  
APPROVED BY AGENCY: February 9, 2001  
FILED WITH LRC: February 13, 2001 at 9 a.m.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Rebecca W. Goodman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation will create a restaurant drink license for distilled spirits and wine and malt beverages to be issued in cities of the fifth and sixth class.

(b) The necessity of this administrative regulation: The purpose of this new administrative regulation will be the creation of a restaurant drink license for distilled spirits and wine and malt beverages in cities of the fifth and sixth class.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation will support the statutory framework for licenses specified in KRS 243.030 and 243.040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will create a new alcohol license and fees and will be carried out in conformity with existing statutes.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organiza-

tions, or state and local governments affected by this administrative regulation: unknown number of potential licensees in fifth and sixth class cities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: New restaurant drink licensees in fifth and sixth class cities will pay the same fee as for a fourth class city.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding needed for the implementation and enforcement of this new administrative regulation amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees for a restaurant drink license in fifth and sixth class cities and the fee is the same as a fourth class city.

(9) TIERING: Is tiering applied? Tiering was not applied because this new administrative regulation will be applied equally to all complying restaurants in fifth and sixth class cities.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. No federal statute or regulation constituting a federal mandate.

2. State compliance standards. Licensing standards applied equally to all restaurant drink licensees in fifth and sixth cities.

3. Minimum or uniform standards contained in the federal mandate. N/A

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

**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

2. State what unit, part or division of local government to which this administrative regulation will affect. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This administrative regulation amendment will create a restaurant drink license for the same of distilled spirits and wine and malt beverages in cities of the fifth and sixth class cities.

**STATEMENT OF EMERGENCY  
902 KAR 13:011E**

HB 405 was passed and codified under KRS Chapter 311 transferred all authority for promulgation of administrative regulations which relate to the functions of emergency medical services in the Commonwealth to the Kentucky Board of Emergency Medical Services. This administrative regulation is being promulgated to effect the transfer of this authority. This emergency administrative regulation is promulgated to comply with KRS 311.6563 and is in accordance with

KRS 13A.190(3a). An ordinary administrative regulation will not suffice because HB 405 became effective on July 14, 2000, which mandates complete transfer of authority to the Kentucky Board of Emergency Medical Services no later than April 1, 2001. This emergency administrative regulation shall not be replaced by an emergency administrative regulation promulgated by the Kentucky Board of Emergency Medical Services simultaneously with the repeal of these administrative regulation.

PAUL E. PATTON, Governor  
JIMMY D. HELTON, Secretary

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Emergency Repealer)**

**902 KAR 13:011E. Repeal of 902 KAR 13:010, 902 KAR 902 KAR 13:030, 902 KAR 13:050, 902 KAR 13:070, 902 KAR 13:080, 902 KAR 13:090, 902 KAR 13:110, 902 KAR 13:120, 902 KAR 13:160, and 902 KAR 13:170.**

RELATES TO: KRS 211.950 to 211.956

STATUTORY AUTHORITY: KRS 211.950 to 211.956

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: 902 KAR 13:010, 902 KAR 13:030, 902 KAR 13:050, 902 KAR 13:070, 902 KAR 13:080, 902 KAR 13:090, 902 KAR 13:110, 902 KAR 13:120, 902 KAR 13:160 and 902 KAR 13:170 are no longer necessary because with the implementation of HB 405, the authority to establish training and certification requirements for emergency medical technicians has been transferred to the Kentucky Board of Emergency Medical Services.

Section 1. 902 KAR 13:010, Definitions for 902 KAR Chapter 13; 902 KAR 13:030, Fees; 902 KAR 13:050, Requirements for examination, certification and recertification for the emergency medical technician; 902 KAR 13:070, Emergency medical technician-basic instructors and EMT-instructor trainers; 902 KAR 13:080, Emergency medical technician-basic authorized procedures; 902 KAR 13:090, Disciplinary actions; 902 KAR 13:110, Emergency medical technician-first responder training, examination and certification; 902 KAR 13:120, EMT-basic and EMT-first responder automated external defibrillation training and authorization; 902 KAR 13:160, Emergency medical services educational institutions and emergency medical services testing agencies; and 902 KAR 13:170, Emergency medical technician-basic course requirements, are hereby repealed.

NICHOLAS Z. KAFUOLIS, M.D., Chairman  
RICE C. LEACH, M.D., Commissioner  
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 15, 2001 at noon

PUBLIC HEARING: A public hearing on this regulation will be held March 21, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by March 14, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 5-W-B, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Robert Calhoun, 564-8963

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeal of 902 KAR

13:010, 13:030, 13:050, 13:070, 13:080, 13:090, 13:110, 13:160, and 13:170.

(b) The necessity of this administrative regulation: 902 KAR 13:010, 13:030, 13:050, 13:070, 13:080, 13:090, 13:110, 13:160, and 13:170 are no longer necessary because with the implementation of HB 405, the authority to establish training and certification requirements for emergency medical technicians has been transferred to the Kentucky Board of Emergency Medical Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: HB 405 requires authority to be transferred to the Kentucky Board of Emergency Medical Services; therefore, the administrative regulations in 902 KAR Chapter 13 must be repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: HB 405 transfers the authority to the Kentucky Board of Emergency Medical Services. By repealing these regulations, the Kentucky Board of Emergency Medical Services simultaneously will file their emergency regulations to administer these grants.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 215 ambulance services currently licensed in the Commonwealth, and each local government authorized to request such funding.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups, by the repeal of these regulations, will have a new regulation promulgated by the Kentucky Board of Emergency Medical Services which simplifies the application for such funds to one page and reduces the total amount of grant funds available to any one county to the maximum of \$25,500.

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

(a) Initially: All funding associated with the EMS program will now be under authority of the Kentucky Board of Emergency Medical Services.

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: HB 405 changing authority to administer these grants from the Cabinet for Health Services to the Kentucky Board of Emergency Medical Services. Appropriations provided by HB 502.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 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.

**STATEMENT OF EMERGENCY**  
**902 KAR 14:011E**

HB 405 was passed and codified under KRS Chapter 311 transferred all authority for promulgation of administrative regulations which

relate to the functions of emergency medical services in the Commonwealth to the Kentucky Board of Emergency Medical Services. This administrative regulation is being promulgated to effect the transfer of this authority. This emergency administrative regulation is promulgated to comply with KRS 311.6563 and is in accordance with KRS 13A.190(3a). An ordinary administrative regulation will not suffice because HB 405 became effective on July 14, 2000, which mandates complete transfer of authority to the Kentucky Board of Emergency Medical Services no later than April 1, 2001. This emergency administrative regulation shall not be replaced by an emergency administrative regulation promulgated by the Kentucky Board of Emergency Medical Services simultaneously with the repeal of these administrative regulation.

PAUL E. PATTON, Governor  
JIMMY D. HELTON, Secretary

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Emergency Repealer)**

**902 KAR 14:011E. Repeal of 902 KAR 14:010, 902 KAR 14:020, 902 KAR 14:070, 902 KAR 14:080, 902 KAR 14:082, 902 KAR 14:084, 902 KAR 14:090 and 902 KAR 14:100.**

RELATES TO: KRS 211.950 to 211.956

STATUTORY AUTHORITY: KRS 211.952, 211.956, 194A.050

EFFECTIVE: February 15, 2001

NECESSITY, FUNCTION AND CONFORMITY: 902 KAR 14:010, 902 KAR 14:020, 902 KAR 14:070, 902 KAR 14:080, 902 KAR 14:082, 902 KAR 14:084, 902 KAR 14:090 and 902 KAR 14:100 are no longer necessary because with the implementation of HB 405, the authority to administer all programs for ambulance funding and licensing of ambulance providers has been transferred to the Kentucky Board of Emergency Medical Services.

Section 1. 902 KAR 14:010, Emergency medical services (EMS) personnel funding assistance; 902 KAR 14:020, Allocation of funding assistance for purchase of ambulances and equipment for emergency medical services (EMS); 902 KAR 14:070, License procedures and fee schedule for ambulance providers; 902 KAR 14:080, Class I ground ambulance providers; 902 KAR 14:082, Class II ground ambulance providers; 902 KAR 14:084, Class III ground ambulance providers; 902 KAR 14:090, Air ambulance service providers; and 902 KAR 14:011, Advanced Life Support (ALS) medical first response providers, are hereby repealed.

NICHOLAS Z. KAFOGLIS, M.D., Chairman  
RICE C. LEACH, M.D., Commissioner  
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 15, 2001 at noon

PUBLIC HEARING: A public hearing on this regulation will be held March 21, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by March 14, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 5-W-B, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Robert Calhoun, 564-8963

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 902 KAR

14:010, 14:020, 14:070, 14:080, 14:082, 14:084, 14:090 and 14:100.

(b) The necessity of this administrative regulation: 902 KAR 14:010, 14:020, 14:070, 14:080, 14:082, 14:084, 14:090 and 14:100 are no longer necessary because with the implementation of HB 405, the authority to administer the grants has been transferred to the Kentucky Board of Emergency Medical Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: HB 405 requires authority to be transferred to the Kentucky Board of Emergency Medical Services; therefore, the administrative regulations in 902 KAR Chapter 14 must be repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: HB 405 transfers the authority to the Kentucky Board of Emergency Medical Services. By repealing these regulations, the Kentucky Board of Emergency Medical Services simultaneously will file their emergency regulations to administer these grants.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 215 ambulance services currently licensed in the Commonwealth, and each local government authorized to request such funding.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups, by the repeal of these regulations, will have a new regulation promulgated by the Kentucky Board of Emergency Medical Services which simplifies the application for such funds to one page and reduces the total amount of grant funds available to any one county to the maximum of \$25,500.

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

(a) Initially: All funding associated with the EMS program will now be under authority of the Kentucky Board of Emergency Medical Services.

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: HB 405 changing authority to administer these grants from the Cabinet for Health Services to the Kentucky Board of Emergency Medical Services. Appropriations provided by HB 502.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 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.

**STATEMENT OF EMERGENCY**  
**902 KAR 20:370E**

This emergency administrative regulation establishes the minimum requirements to operate a private duty nursing agency. This administrative regulation must be enacted on an emergency basis to ensure citizens of the Commonwealth, who are in need of private duty



nursing services, are able to receive those services. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL E. PATTON, Governor  
JIMMY D. HELTON, Secretary

**CABINET FOR HEALTH SERVICES**  
**Office of Inspector General**  
**(New Emergency Administrative Regulation)**

**902 KAR 20:370E. Operations and services; private duty nursing agencies.**

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 216B.990, 311.560(4), 314.011(8), 314.041

STATUTORY AUTHORITY: KRS 216B.042(1)

EFFECTIVE: January 29, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of, and services provided by private duty nursing agencies.

Section 1. Definitions. (1) "Agency" means a private duty nursing agency.

(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(3) "License" means an authorization issued by the cabinet for the purpose of operating a private duty nursing agency.

(4) "Private duty nursing agency" means a person, firm, corporation, partnership or association engaged for hire in the business of providing continuous licensed nursing care to a patient in his home. It shall not include a registered nurse providing nursing services as an independent practitioner.

(5) "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.04.

Section 2. Administration. (1) The licensee shall:

(a) Have legal responsibility for the service and for compliance with relevant federal, state and local law.

(b) Establish lines of authority; and

(c) Designate an administrator who shall be responsible for the daily operation of the agency.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances.

(d) A narrative describing in detail:

1. The services offered by the agency;

2. Methods and protocols for service delivery;

3. Qualifications of personnel involved in the delivery of the service; and

4. Goals of the agency.

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed in the handling and administration of drugs and biologicals; and

(g) Patient care policies developed with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s), and shall include:

1. A description of the services provided;

2. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers serving the patient, and immediate verbal communication between pro-

viders of revisions in the common plan shall be documented in the plan of treatment;

3. Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient referral, and the maintenance of health records;

4. Procedures for the annual review and evaluation of the services provided; and

5. Guidelines for patient and environment assessment.

(3) Personnel.

(a) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services.

(b) The licensee shall provide written personnel policies, which shall be available to all employees, reviewed on an annual basis, and revised as necessary.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program with provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) The licensee shall maintain a current personnel record for each employee. Data maintained shall include:

1. Name, address and Social Security number;

2. Evidence of current registration, certification or licensure;

3. Records of training and experience;

4. Records of performance evaluation;

5. Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and

6. Preemployment criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his home.

(f) An employee of the program who has direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from either the American Heart Association or the American Red Cross.

(g) In-service training. An employee shall participate in ongoing in-service training programs relating to his job activities, including thorough job orientation for a new employee.

(5) Medical records.

(a) The service shall maintain a medical record for a patient, to include the following:

1. Medical and social history relevant to the service provided, including data obtainable from other providers;

2. Name of referring physician, or other ordering practitioner acting within his statutory scope of practice;

3. Orders of referring physician, or other ordering practitioner acting within his statutory scope of practice.

4. Description of each contact, including the:

a. Condition or reason necessitating contact;

b. Assessment;

c. Service provided;

d. Medication and treatment prescribed;

e. Disposition made; and

5. Documentation of referrals made, including:

a. Reason for referral;

b. To whom the patient was referred; and

c. Information obtained from a referral source.

(b) Confidentiality of patient records shall be maintained at all times.

(c) Transfer of records. If the patient moves to another source of care, the agency shall:

1. Establish systematic procedures to assist in continuity of care; and

2. Transfer medical records or an abstract thereof if requested and a release document has been executed.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(e) The agency shall designate a specific location for the maintenance and storage of the agency's medical records.

(f) The agency shall have provisions for storage of medical rec-



ords in the event the agency ceases to operate.

(g) The licensee shall safeguard the record and its content against loss, defacement or tampering.

Section 3. Private Duty Nursing Agency Services. (1) Private duty nursing agency services shall be provided in accordance with a plan of treatment prescribed by a licensed physician or other ordering practitioner acting within his statutory scope of practice and as permitted by KRS Chapter 314. The plan of treatment shall be developed in consultation with the prescribing practitioner, agency personnel, and the patient, patient's family member or patient's responsible party. The plan of treatment shall be reviewed by the ordering practitioner in consultation with agency personnel and the patient's family member or patient's responsible party, at such intervals as the severity of the patient's illness require, but in any instance, at least once every two (2) months.

(2) Private duty nursing agency services shall be nonabusive and provided in a manner, which ensures the greatest amount of safety and security for the patient.

(3) Private duty nursing agency personnel shall ensure that any medical waste generated as a result of a service provided shall be removed from a patient's home and disposed of properly.

Section 4. Licensing Procedures. (1) Initial licensure.

(a) A private duty nursing agency applying for a license to operate shall return a completed L&R 144 to the Office of Inspector General along with the initial licensing fee of \$134.

(a) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 902 KAR 20:008.

(2) Relicensure. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed L&R 144 to the Office of the Inspector General along with the annual relicensure fee of \$134.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: Form L&R 144, Application for a License to Operate a Health Facility or Service, January 2001 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAMELA J. MURPHY, Inspector General

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: January 26, 2001

FILED WITH LRC: January 29, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Reese

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation and services of private duty nursing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure requirements for private duty nursing agency operations and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of, and services provided by private duty nursing agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Office of the Inspector General the authority to ensure that private duty nursing agencies provide adequate needs to meet patient need and provide for patient safety.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are no licensed private duty nursing agencies. This administrative regulation will affect any private duty nursing agency applying for a license to operate.

(3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes the process for private duty nursing agencies to receive the license to operate a health facility or service required by KRS Chapter 216B.

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

(a) Initially: At this time, the Office of the Inspector General is unable to determine the exact cost of implementing this administrative regulation. The Office of the Inspector General will be in a better position to determine costs when it is known how many private duty nursing agencies are going to apply for licensure.

(b) On a continuing basis: At this time, the Office of the Inspector General is unable to determine the exact cost of implementing this administrative regulation. The Office of the Inspector General will be in a better position to determine costs when it is known how many private duty nursing agencies are going to apply for licensure.

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

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes the licensure category for private duty nursing agencies and also establishes the licensure fee for private duty nursing agencies. The licensure fee established in this administrative regulation is required by the Office of the Inspector General so that inspections can be made to ensure private duty nursing agencies are meeting minimum requirements for licensure.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does directly establish a fee for the licensure of a private duty nursing agency.

(8) 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.

#### STATEMENT OF EMERGENCY 907 KAR 1:013E

This emergency administrative regulation is being promulgated to clarify critical access hospital reimbursement methodology. This methodology complies with KRS 216.380 which governs payments to critical access hospitals. This action must be taken on an emergency basis to ensure that critical access hospitals are provided with all available federal funds. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because there is potential that critical access hospitals will not continue to participate in the Medicaid Program due to the current reimbursement for services provided to eligible persons. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on October 6, 2000 as follows: this emergency administrative regulation establishes the payment methodology for critical access hospital inpatient services provided to eligible Kentucky Medicaid recipients in accordance with KRS 216.380. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JIMMY D. HELTON, Secretary

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Physical Health**  
**(Emergency Amendment)**

**907 KAR 1:013E. Payments for hospital inpatient services.**

RELATES TO: KRS 205.520, 205.565, 205.640[; 1996 Ky. Acts ch. 380, Part I, GB, 51, 5]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560(2), 205.637, 205.640, 216.380(10), 20 CFR 405.402 through 405.488, 42 CFR 412, 413, 440.10, 440.140, 447.250 through 447.280, 42 USC 1395f(l), x(mm), 1396a, b, d, r-4, 2000 Ky. Acts ch. 310, 439, 902 KAR 20:180, 902 KAR 20:240 [EO 96-862]

EFFECTIVE: January 26, 2001

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide an acute care hospital service in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.

(5) "Critical access hospital" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "Disproportionate share hospital" or "DSH" means a hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 USC 1396r-4(d).

(8) "DRI" means Data Resources, Incorporated.

(9) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 USC 1396b(w)(6)(A).

(10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(11) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis to an individual determined to be indigent in accordance with KRS 205.640 and for which an individual shall not be billed by the hospital. Unreimbursed cost for a service provided to a Medicaid recipient shall not be included in indigent care.

(12) "Indigent care eligibility criteria" means the criteria as specified in Section 18 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.

(13) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(14) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration

based on generally-accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441 Subpart B for Medicaid-eligible persons under twenty-one (21) years of age.

(15) "Pediatric teaching hospital" is defined in KRS 205.565.

(16) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in a psychiatric hospital only.

(17) "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

(18) "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by a percent of increase as specified in Section 3 of this administrative regulation.

(19) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(20) "Resident" means an individual living in Kentucky and who is not receiving public assistance in another state.

(21) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital possessing only a residency program or rotation agreement.

(22) "Third-party payor" means any private or public entity or program that may be liable by law, administrative regulation or contract to make payment to, or on behalf of, an individual for a health care service.

(23) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(24) "Type I hospital" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(25) "Type II hospital" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV hospital.

(26) "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville medical school.

(27) "Type IV hospital" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(28) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which payment a rate is established for a hospital regardless of the hospital's fiscal year end.

(29) "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on the following:

(a) Utilization;

(b) Peer grouping; and

(c) Age of patient.

(30) "Urban trauma center hospital" means a hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

(31) "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Reimbursement for an Inpatient Hospital Service. (1) The department shall reimburse for an inpatient hospital service provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 USC 1396(a)(13); and

(2) Excluding critical access hospitals, reimbursement for an inpatient hospital service shall be prospective.

Section 3. Acute Care Hospital and Rehabilitation Hospital Inpatient Services. (1) The reimbursement rate for an acute care hospital and for a rehabilitation hospital for the rate year beginning July 2000 shall be determined by utilizing a rate on rate methodology as follows:

(a) The department shall utilize a hospital's June 30, 2000, per diem rate that includes operating, professional and capital cost components; and

(b) The per diem rate shall be multiplied by the rate of increase of two and eight-tenths (2.8) percent;

(2) An additional payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation;

(3) Payment for the following transplants shall be made in accordance with Section 3 of this administrative regulation:

(a) Kidney;

(b) Cornea;

(c) Pancreas; or

(d) Kidney and pancreas;

(4) Payment for a transplant not listed in subsection (3) of this section shall be made in accordance with 907 KAR 1:350; and

(5) Payment for a federally-defined hospital swing bed shall be made in accordance with 907 KAR 1:025.

Section 4. Psychiatric Hospital Inpatient Service. (1) The Department for Medicaid Services shall pay for an inpatient psychiatric hospital service provided to an eligible Medicaid recipient in a psychiatric hospital by multiplying the hospital's per diem rate by the number of allowed patient days.

(2) The per diem rate for a psychiatric hospital for the universal rate year beginning on or after July 2000 shall be determined by the department in accordance with Sections 6 through 13 of this administrative regulation.

(3) An additional payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation.

Section 5. Critical Access Hospital. (1) The department shall pay for an inpatient service provided by a critical access hospital to an eligible Medicaid recipient through an interim per diem rate as established by the Health Care Financing Administration for the Medicare program.

(2) The effective date of a rate shall be the same as used by the Medicare program.

(3) A hospital's final reimbursement shall reflect any adjustment made by the Health Care Financing Administration for the Medicare program.

(4) The provisions of Section 6 through Section 15 of this administrative regulation shall not apply to a critical access hospital, except:

(a) A hospital shall be required to submit an annual Medicare/Medicaid cost report;

(b) The cost report submitted by a hospital shall be subject to audit and review; and

(c) Total payments made to a hospital under this section shall be subject to the payment limitation in 42 CFR 447.271.

(5) Payment for a federally defined swing bed in a critical access hospital shall be made in accordance with 907 KAR 1:025.

Section 6. Use of a Prospective Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(2) An allowable Medicaid cost shall:

(a) Be a cost allowed after a Medicare audit;

(b) Be in accordance with 42 CFR 412 and 413;

(c) Include a hospital provider tax; and

(d) Not include costs listed in Section 13(14)(c) and (d) of this administrative regulation or Section 106 of the Medicaid Reimbursement Manual for Inpatient Hospital Services.

(3) The most recent Medicaid cost report available as of May 1 preceding the current universal rate year shall:

(a) Be the basis of the prospective payment; and

(b) Establish the base year.

(4) A prospective rate shall include both routine and ancillary costs.

(5) A prospective rate shall not be subject to retroactive adjustment, except for:

(a) A critical access hospital; or

(b) A facility with a rate based on unaudited data.

(6) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.

(7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 CFR 447.271.

(8) An overpayment shall be recouped by the department as follows:

(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or

(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 7. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 of each year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 8. Trending of a Cost Report. An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the universal rate year to update a hospital's Medicaid cost; and

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 9. Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be applied shall be the inflation factor prepared by DRI for the universal rate year.

Section 10. Peer Grouping. (1) For rate setting, a hospital shall be peer grouped based on the number of beds licensed as of May 1 preceding the universal rate year;

(2) A peer group shall be:

(a) Zero to fifty (50) beds;

(b) Fifty-one (51) to 100 beds;

(c) 101-200 beds;

(d) 201-400 beds; and

(e) 401 beds or more;

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more but shall be subject to the upper payment limit for a facility with 401 beds or more;

(4) A psychiatric hospital shall not be peer grouped but shall be in a separate array of psychiatric hospitals; and

(5) A rehabilitation hospital and an acute care hospital that is restricted to providing rehabilitation services shall not be:

(a) Peer grouped;

(b) Arrayed; or

(c) Subject to the operating cost upper payment limit.

Section 11. Minimum Occupancy Factor. (1) If a hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more beds; and

(c) A newly-constructed hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 12. Reduced Depreciation Allowance. (1) The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports; and

(2) The use of a reduced depreciation allowance shall not be applicable to a psychiatric hospital.

Section 13. Upper Payment Limits and Payment Principles. (1) An acute care hospital with 101 beds or more shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of the hospital's peer group;

(2) An acute care hospital with 100 beds or less shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem cost of the hospital in its peer group;

(3) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospitals in that peer grouping;

(4) A state university teaching hospital shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem cost of the hospital's peer group;

(5) A state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days, shall have an upper payment limit set at 126 percent of the weighted median per diem cost of the hospital of 401 beds and up;

(6) A pediatric teaching hospital shall have an upper payment limit set at 126 percent of the weighted median per diem cost of its appropriate peer group;

(7) A psychiatric hospital:

(a) Shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in the array;

(b) Designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children, shall be exempt from the upper payment limit for the array and be paid at projected actual cost as follows:

1. Projected actual cost shall be determined by:

a. The Medicare and Medicaid cost reports supplemented by any expenditures allowed on the Medicaid cost report incurred since the filing of the cost report; and

b. Projected additional expenditures for the rate year;

2. Projected additional expenditures for the rate year not subsequently incurred shall be subject to a cost settlement based on actual expenditures allowed on a Medicaid cost report; and

3. The cost determined in subparagraph 1a of this paragraph shall be adjusted for inflation using the DRI index;

(8) If a desk review or audit of the most current cost report is completed after May 1 but prior to the universal-rate setting for the year,

the desk review or audited data shall be utilized for rate setting;

(9) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services;

(10) The payment principles established in this section, Section 2 of this administrative regulation, and the Medicaid Inpatient Hospital Services Reimbursement Manual shall govern reimbursement for an inpatient hospital service;

(11) An array and an upper payment limit shall not be altered after being set by the department;

(12) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper payment limit shall not be established;

(13) A provider tax attributable to Medicaid utilization shall be an allowable cost; and

(14) The following limits shall be applied to a per diem rate increase for an acute care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period;

(b) A limit shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond an amount specified in paragraph (a) of this subsection shall be an unallowable cost; and

(d) An unallowable cost resulting from the use of a limit established in paragraph (a) of this subsection shall not be included in the base for future rate setting.

Section 14. Payment for an Inpatient Service for a Child Under Age Six (6) Years. For a child under age six (6) years in a disproportionate share hospital and a child under age one (1) year in a nondisproportionate share hospital the following shall apply:

(1) For the first thirty (30) days of inpatient service, payment shall be made in accordance with Sections 3, 4, 5, and 21 of this administrative regulation; and

(2) After thirty (30) days, an amount equal to 110 percent of a hospital's per diem rate shall be paid, and the payment shall apply:

(a) To an inpatient service determined by the department to be medically necessary:

1. Thirty (30) days after the date of admission of a child; or

2. For a newborn, thirty (30) days from the date of discharge of the mother; and

(b) Without regard to length of stay or number of admissions.

Section 15. Supplemental Payments. (1) In addition to a base payment rate developed under Section 3 of this administrative regulation, a pediatric teaching hospital shall be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy not to exceed the prospective reasonably determined uncompensated Medicaid cost, as determined by the department, to the hospital.

(2) In place of the payment described in subsection (1) of this section, a pediatric teaching hospital that further meets the criteria of a Type III hospital shall:

(a) In addition to the total payment received as a per diem under Section 3 of this administrative regulation, be paid an amount which:

1. Is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy, not to exceed the payment limit as specified in 42 CFR 447.271;

2. Is prospectively determined with an end-of-the-year settlement; and

3. Is paid on a quarterly basis.

(b) Provide the state funds necessary to secure federal financial participation for funding under this section.

(3) A supplemental payment shall be made to a Type III hospital that qualifies as an urban trauma center hospital in an amount:

(a) Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this subsection;

(b) Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals who qualify under this subsection;

(c) That is prospectively determined with an end-of-the-year settlement; and

(d) Consistent with the requirements of 42 CFR 447.271; and

(4) Any overpayment made to a facility under subsection (3) of this section shall be recovered by subtracting any overpayment amount from a succeeding year's payment to be made to the facility under subsection (3) of this section.

(5) For the purpose of subsection (3) of this section, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.

**Section 16. Disproportionate Share Hospital Payment.** (1) A disproportionate share hospital payment shall be made to a qualified hospital based upon available funds in accordance with KRS 205.640;

(2) A payment to a Type I hospital or a Type II hospital shall:

(a) Be made in accordance with KRS 205.640; and

(b) Be a prospective amount and shall not be subject to settlement or revision based on a change in utilization during the year to which it applies;

(3) The cost of indigent care for the purpose of making a payment to a Type I hospital or Type II hospital shall be determined by:

(a) Multiplying a facility's cost-to-charge ratio by its allowable inpatient and outpatient indigent charges; and

(b) The cost-to-charge ratio used shall be the cost-to-charge ratio in effect for the corresponding rate year as submitted by the Labor Cabinet in accordance with 803 KAR 25:091; and

(4) Distributions to a Type III hospital shall:

(a) Be based on a facility's historical proportion of the costs of services to Medicaid recipients, minus the amount paid by Medicaid under Sections 3, 14 and 15 of this administrative regulation, plus the costs of services to indigent patients minus any payments made on behalf of indigent patients;

(b) Be a prospective amount and shall not be subject to settlement or revision based on a change in utilization during the year to which it applies;

(c) Be made on an annual basis; and

(d) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for payment under this subsection; and

(5) Distributions to a Type IV hospital shall:

(a) Be equal to the costs of services provided to indigent patients minus any payments made on behalf of an indigent individual;

(b) Be proportionally reduced by the department if the cost exceeds available funds; and

(c) Be made annually but no less than quarterly.

**Section 17. Indigent Care Eligibility.** (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form (DSH-001) to assess a patient's financial situation to determine if:

(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or

(b) A patient meets the indigent care eligibility criteria.

(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance (Medicaid or KCHIP) within thirty (30) days of completing the DSH-001 form at the hospital.

**Section 18. Indigent Care Eligibility Criteria.** (1) A hospital shall receive funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of Sections 16 of this administrative regulation if the following apply:

(a) The patient is a resident of Kentucky;

(b) The patient is not eligible for Medicaid or KCHIP;

(c) The patient is not covered by a third-party payor;

(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;

(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:

1. The patient;

2. The patient's spouse;

3. The minor's parent or parents living in the home; and

4. Any minor living in the home;

(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;

(g) Countable resources of a family unit shall not exceed:

1. \$2,000 for an individual;

2. \$4,000 for a family unit size of two (2); and

3. Fifty (50) dollars for each additional family unit member;

(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and

(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640;

(2) Total annual gross income shall be:

(a) Income received during the twelve (12) months preceding the month of receiving a service;

(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4); or

(c) Used unless a patient is self employed and has a work expense that can be deducted from gross income;

(4) A work expense for a self-employed patient shall be deducted from gross income if:

(a) The work expense is directly related to producing a good or service; and

(b) Without it the good or service could not be produced;

(5) A hospital shall notify the patient or responsible party of his eligibility for indigent care; and

(6) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

**Section 19. Indigent Care Eligibility Determination Fair Hearing Process.** (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 18 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding an patient's indigent care eligibility determination shall allow the individual to:

(a) Review evidence regarding the indigent care eligibility determination;

(b) Cross-examine witnesses regarding the indigent care eligibility determination;

(c) Present evidence regarding the indigent care eligibility determination; and

(d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days and shall provide a copy of its decision to:

(a) The patient or responsible party who requested the fair hearing; and

(b) The department.

(5) A fair hearing process may be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

**Section 20. Indigent Care Reporting Requirements.** (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

**Section 21. Payment to a Participating Out-of-state Hospital.** (1) A participating out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at

the lesser of:

(a) Seventy-five (75) percent of its usual and customary charges; or

(b) A per diem rate equal to the in-state operating per diem upper limit for a comparable size hospital, plus:

1. A provision for capital cost that is equal to the mean capital cost per diem for the appropriate peer group in accordance with Section 10 of this administrative regulation; and

2. If applicable, a professional component that shall be paid at seventy-five (75) percent of charges;

(2) Payments for a child under age six (6) years in a disproportionate share hospital or under age one (1) year in a nondisproportionate share hospital shall be made at the lesser of:

(a) Eighty-five (85) percent of usual and customary charges; or

(b) At an amount specified in Section 14 of this administrative regulation;

(3) For the universal rate year beginning July 1, 1999, the per diem rate shall be an amount equal to the per diem determined by increasing the per diem determined under subsection (1)(b) of this section for universal rate year 1998, by three (3) percent; and

(4) For the universal rate year beginning July 2000, the per diem rate shall be an amount equal to the per diem rate determined under subsection (3) of this section, increased by two and eight-tenths (2.8) percent.

**Section 22. Provider Appeal Rights.** A hospital may appeal a department decision involving the application of this administrative regulation to the hospital's reimbursement in accordance with 907 KAR 1:671.

**Section 23. Incorporation by Reference.** (1) The "Medicaid Reimbursement Manual for Hospital Inpatient Services", January 2001 Edition, is incorporated by reference.

(2) The material incorporated by reference may be inspected, copied, or obtained subject to applicable copyright law at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ("Acute care hospital" means a hospital licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.

(5) "Cost basis" means the total allowable Medicaid inpatient cost incurred by the provider in the base year.

(6) "Department" means the Department for Medicaid Services or its agent.

(7) "Disproportionate share hospital" (DSH) means a hospital that:

(a) Meets the criteria established in 42 USC 1396r-4(d); and

(b) 1. Meets the criteria established in 42 USC 1396r-4(b); or

2. Has a Medicaid utilization of one (1) percent or higher.

(8) "DRI" means Data Resources, Incorporated.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(10) "Indigent days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria established in 907 KAR 1:635, and which are uninsured or unreimbursed by another source.

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time:

(12) "Pediatric teaching hospital" is defined in KRS 205.565.

(13) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in a psychiatric hospital.

(14) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established in 902 KAR 20:180.

(15) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established in 902 KAR 20:240.

(16) "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.

(17) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(18) "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(19) "Type II hospital status" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV status hospital.

(20) "Type III hospital status" means an in-state disproportionate share state university teaching hospital, owned and operated by either the University of Kentucky or the University of Louisville medical school; that has requested a Type III status which has been approved by the Department for Medicaid Services.

(21) "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(22) "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.

(23) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July 1 of each year for which payment rates are established for a hospital regardless of the hospital's fiscal year end.

(24) "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on specified circumstances as follows:

(a) Utilization factors;

(b) Teaching hospital status; and

(c) Age of patient.

(25) "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

**Section 2. Acute Care Hospital, Rehabilitation Hospital and Psychiatric Hospital Inpatient Services.** The Department for Medicaid Services shall pay for inpatient hospital services provided to an eligible Medicaid recipient through the use of a rate that is reasonable and adequate to meet the cost that is required to be incurred by an efficiently and economically operated hospital to provide a service in conformity with applicable state and federal laws, regulations, and quality and safety standards.

**Section 3. Use of a Prospective Rate.** (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid inpatient costs and Medicaid inpatient days.

(a) The prospective rate shall include both routine and ancillary costs:

(b) If a base year is selected for setting a rate, that base year shall not change:

(c) The prospective rate shall not be subject to retroactive adjustment, except for a facility with a rate based on unaudited data. This facility shall have its rate appropriately revised for the rate year when the audited cost report for the base year becomes available to the department.



(d) Total prospective payments shall not exceed the total customary charges in the prospective year;

(2) An overpayment shall be recouped by:

(a) Payment from the provider for the amount of the overpayment; or

(b) The withholding of the overpayment amount from a future payment due the provider.

Section 4. Use of a Universal Rate Year. (1) A universal rate year shall be set for a facility with the universal rate year established as July 1 through June 30 of each year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal years to conform with a universal rate years.

Section 5. Trending of a Cost Report. The following policies shall be used for the trending of a cost report:

(1) An allowable Medicaid cost, excluding capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 6. Indexing for Inflation. (1) After an allowable cost has been trended to the beginning of the rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be used shall be the inflation factor prepared by DRI for the universal rate year.

Section 7. Peer Grouping. For rate setting purposes, a hospital shall be grouped with other hospitals in accordance with the following provisions:

(1) The peer grouping shall be based on the number of beds licensed, as of May 1 preceding the universal rate year, which provide Medicaid covered services and shall meet minimum licensure requirements in accordance with 902 KAR 20:009, 902 KAR 20:006, 902 KAR 20:170, 902 KAR 20:180, 902 KAR 20:230 and 902 KAR 20:240.

(2) The peer groupings shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital and an acute care hospital that is restricted to providing rehabilitation services shall not be:

(a) Peer grouped;

(b) Arrayed; or

(c) Subject to the operating cost upper limit.

Section 8. Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if one (1) of the following minimum occupancy factors are not met:

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or

(2) A seventy-five (75) percent occupancy factor shall apply to a hospital with 101 or more beds.

Section 9. Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance shall not be applicable with regard to a psychiatric hospital.

Section 10. Upper limits and payment principles shall apply to a hospital, with additional limitations for a disproportionate share hospital established in Section 11 of this administrative regulation, as follows:

(1) An acute care hospital with 101 beds or more shall have an

upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in each peer group.

(2) An acute care hospital with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem for a hospital in its peer group.

(3) A state university teaching hospital shall have an upper limit on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for a hospital in its peer group;

(4) A psychiatric hospital:

(a) Shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in the array;

(b) Designated by the department as a primary referral and services resource for a child in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year-end settlement to actual cost; and

(c) May have the projected cost adjusted for usual cost of living increases using the DRI Index.

(5) Except as provided in subsection (10) of this section the following principles shall apply:

(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.

(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services:

1. Except as provided in subparagraph 2 of this paragraph, the manual shall govern the Medicaid reimbursement for a hospital inpatient service.

2. If a reimbursement issue or area is not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.

(6) After being set, the arrays and upper limits shall not be altered due to a revision or correction of data.

(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

(8) A provider tax shall be considered an allowable cost. The portion attributable to Medicaid utilization shall be included in the per diem rate.

(9) Except as provided in subsection (10) of this section, the following controls shall be applied to the per diem rate increases for an acute care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period;

(b) Limits shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(10) For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:

(a) The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor prepared by DRI for the same period;

(b) There shall be an add-on to the rate, computed as fifteen (15) percent of the amount between the lesser of:

1. The operating cost per diem or the maximum operating per diem, whichever is less; or

2. The operating per diem as limited by the rate of increase control (one and one-half (1 1/2) times the DRI); and

(c) The capital component shall not be indexed. The capital com-



ponent of the rate shall be the amount computed for capital cost in the 1996 individual hospital rate notice, excluding the application of the rate of increase control (one and one-half (1 1/2) times the DRI).

(11) For a medically necessary hospital inpatient service provided for an exceptionally high cost or long length of stay, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infant. Exceptionally high cost or long length of stay shall be, in a nondisproportionate share hospital, those cost and days of stay for a child under age one (1) that:

(a) For a newborn, is thirty (30) days from the date of discharge for the mother; or

(b) For another child, is after thirty (30) days from the date of admission.

Section 11. The following upper limits and payment principles shall apply to a disproportionate share hospital:

(1) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for a hospital in that peer grouping.

(2) A state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 126 percent of the weighted median per diem cost for a hospital of 401 beds and up.

(3) A designated state pediatric teaching hospital meeting the criteria in subsection (2) of this section shall:

(a) Have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group; and

(b) In addition to the hospital's base rate, be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital.

(4) Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in the array.

(5) An acute care hospital with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for a hospital in the array.

(6) Another disproportionate share acute care hospital shall have its upper limit set at the weighted median per diem of the cost for a hospital in the peer grouping.

(7) A hospital shall be reimbursed an additional amount equal to 110 percent of a hospital's per diem rate for medically necessary hospital inpatient days of service provided for an exceptionally high cost or long length of stay, without regard to length of stay or number of admissions of the child. Exceptionally high cost or long length of stay shall be, in a disproportionate share hospital, those costs and days of stay for a child under the age of six (6) that:

(a) For a newborn, is thirty (30) days beyond the date of discharge for the mother; or

(b) For another child, is after thirty (30) days from the date of admission.

(8) The disproportionate share hospital payment for the period beginning February 20, 1995 shall be made as follows:

(a) The disproportionate share hospital payment for a Type I and Type II hospital shall include a volume adjustment:

1. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to a Type I and Type II hospital for indigent care services provided during the 1998 fiscal year shall not exceed \$91,900,000. If a payment will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionately.

3. The inpatient equivalent care days for a hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment

per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

(b) The disproportionate share hospital payment for a Type III and IV hospital shall be equal to 100 percent of the cost of services to a Medicaid patient, less the amount paid by Medicaid as a usual Medicaid per diem payment, plus the cost of services to an uninsured patient, less any cash payment made by an uninsured patient. Type III status shall be granted to a state university teaching hospital if the hospital agrees as a part of its request for a Type III status to:

1. Forego a local or state government contribution for charity care; and

2. Provide up to 100 percent of the state matching funds necessary to secure federal financial participation for a Medicaid disproportionate share hospital payment to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payment for a Type V hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

Section 12. In accordance with KRS 205.640, except for none-emergency care rendered through a hospital emergency room, an in-state nondisproportionate share hospital shall be compensated in the manner described in Section 11(8)(a) of this administrative regulation for services provided by the hospital to a Medicaid recipient beyond the covered days and to an individual and family with a total annual income and resources up to 100 percent of the federal poverty level.

Section 13. Payment to a Participating Out-of-state Hospital. (1) A participating out-of-state hospital shall be reimbursed for covered inpatient services rendered to an eligible Kentucky Medicaid recipient at the lesser of seventy-five (75) percent of usual and customary charges or the in-state per diem upper limit for a comparable size hospital, plus a provision for capital cost. The capital cost provision shall be computed by using the mean value of the capital cost per diem paid per peer group for an in-state hospital.

(2) A participating out-of-state hospital shall be reimbursed at the lesser of eighty-five (85) percent of usual and customary charges or 110 percent of the in-state per diem upper limit for a comparable size hospital for an exceptionally high cost or long length of stay related to an infant under the age of one (1) in a nondisproportionate share hospital; or a child under age six (6) in disproportionate share hospitals; without regard to length of stay or number of admissions of the infant or child. Exceptionally high cost or long length of stay shall be those cost and days of stay:

(a) In a nondisproportionate share hospital, as defined in Section 10(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 11(7) of this administrative regulation.

(3) Except as provided in subsection (2) of this section, disproportionate status shall be reimbursed in accordance with Section 11(1) and (8)(c) of this administrative regulation.

(4) Professional costs for covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 14. Provider Appeal Rights. If appealed, negative action shall be appealed in accordance with 907 KAR 1:671.

Section 15. Incorporation by Reference. (1) "Medicaid Reimbursement Manual for Hospital Inpatient Services", July 1997 edition; Department of Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621; Monday through Friday, 8 a.m. to 4:30 p.m.]

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: January 23, 2001

FILED WITH LRC: January 26, 2001 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon Rodríguez

(1) Provide a brief summary of: 907 KAR 1:013E

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for inpatient hospital services provided to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for inpatient hospital services provided to Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse for inpatient hospital services provided to Medicaid recipients. This administrative regulation establishes the reimbursement methodology for inpatient hospital services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for inpatient hospital services provided to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes state fiscal year (SFY) 2001 reimbursement methodology for inpatient hospital services provided to disproportionate share of low income patients.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to establish the SFY 2001 reimbursement methodology for inpatient hospital services provided to disproportionate share of low income patients.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes grant DMS the authority to amend the reimbursement methodology for inpatient hospital services provided to disproportionate share low income patients.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will establish the SFY 2001 reimbursement methodology for inpatient hospital services provided to disproportionate share low income patients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: 120 in-state hospitals and 300 out-of-state hospitals will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group of providers will be positively impacted by the implementation because they will have receive a favorable SFY 2001 reimbursement for inpatient hospital services provided to disproportionate share low income patients.

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

(a) Initially: DMS expenditures will increase approximately \$38.6 million.

(b) On a continuing basis: Continuing expenditures may be higher or lower depending on the level of utilization and on the number of hospitals applying for critical access status.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources are federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation imposes no fee. The necessity of a funding increase will depend on the inpatient hospital utilization and on the number of hospitals that apply for critical access status.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended at ARRS, February 13, 2001)

12 KAR 5:010. Licenses.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.795 to 260.805]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a procedure to license a person or entity who is qualified as a milk handler, laboratory, sampler-weigher, tester, or transfer station. (The Director of the Agricultural Experiment Station, University of Kentucky is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, milk testers and milk weighers and samplers. The function of the administrative regulation is to license those who are adjudged and qualified as a milk buyer, tester or weigher and sampler.)

Section 1. (1) License to handle milk, laboratory license, and transfer station license. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a license to handle, laboratory license, or transfer station license. Each license shall be displayed accordingly:

(a) A current license to handle milk shall be prominently displayed at each handling location;

(b) A current laboratory license shall be prominently displayed at each laboratory location; and

(c) A current transfer station license shall be prominently displayed at each transfer station location.

(2) Temporary license to sample and weigh milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day, [nonrenewable] temporary license to sample and weigh milk. A temporary license may only be reissued if a person does not pass the written examination requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to sample and weigh milk shall be provided informational material by the director to notify him of proper sampling and weighing procedures. He shall become familiar with the informational material and shall perform the procedures under the supervision of a licensed sampler-weigher until a supervisor believes he is competent of proper procedures. When he has become familiar with and complies with proper procedures, he may sample and weigh milk without immediate supervision. He shall carry the temporary license to sample and weigh when sampling and weighing milk.

(b) A person issued a temporary license to sample and weigh milk shall be scheduled for and required to attend a one (1) day training school and take a written examination administered by the director. Upon scoring a minimum of seventy (70) percent on the written examination, a license to sample and weigh milk may be issued. The person shall carry the license to sample and weigh when sampling and weighing milk.

(3) Temporary license to test milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and competent and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day [nonrenewable] temporary license to test milk. A temporary license may only be reissued if a person does not pass the written examina-

tion requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to test milk shall be provided informational material by the director to notify him of proper testing procedures. He shall become familiar with the informational material and shall perform the testing procedures for which he seeks approval under the supervision of a licensed tester until a supervisor believes he is competent of proper procedures. When he has become familiar with and complies with proper procedures, he may test milk without immediate supervision. A [The] person shall conspicuously post the temporary license to test in the laboratory where testing is performed or carry the temporary license to test when he is [in the act of] testing milk.

(b) A person issued a temporary license to test milk shall demonstrate competency in milk testing procedures for which he seeks approval to the director and shall take a written examination administered by the director. Upon demonstrating competency and scoring a minimum of seventy (70) percent on the written exam, a license to test milk may be issued. The milk tester [person] shall conspicuously post the license to test in the laboratory where testing is performed or carry the license to test when he is testing milk.

(4) Renewal for a license to sample and weigh and renewal for a license to test. Upon receipt of an accurately-completed renewal application with fee as required by KRS 260.815, and if the applicant is deemed by the director to be in compliance with KRS 260.775 to 260.845, the director may issue a renewed license to sample and weigh or a renewed license to test. An applicant may renew a lapsed license for up to three (3) years past the expiration date by paying back-fees for each year and one (1) penalty fee provided for in KRS 260.992(3).

(5) All licenses issued under the authority of KRS 260.775 to 260.845 shall expire on June 30 of each year. The licenses shall be renewed on or before July 1 by accurately completing and submitting an application with the appropriate fee to the director. Applications shall be provided by the director.

(6) Reciprocity. The director may reciprocate with other states and issue a license to sample and weigh or a license to test upon submission of satisfactory evidence that the requirement for licensure in the other state is equivalent to the requirements of KRS 260.775 to 260.845. The director may require an applicant for reciprocity to pass an examination to establish his competency. Applicants for reciprocity shall be required to submit an accurately-completed application with fee to the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License to Handle Milk", October 2000, Division of Regulatory Services;

(b) "Application for Laboratory License", October 2000, Division of Regulatory Services;

(c) "Application for Transfer Station License", October 2000, Division of Regulatory Services;

(d) "Application for Temporary License to Sample and Weigh Milk", October 2000, Division of Regulatory Services;

(e) "Application for Temporary License to Test Milk", October 2000, Division of Regulatory Services;

(f) "Renewal Application for License to Sample and Weigh Milk", October 2000, Division of Regulatory Services; and

(g) "Renewal Application for License to Test Milk", October 2000, Division of Regulatory Services.

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [A current license to buy and a current license to test milk shall be prominently displayed (posted separately) in each buying

place:

Section 2. A current license to weigh and sample milk in bulk tanks from producers shall be displayed at the buying place at which the licensee normally delivers milk. A second copy shall be carried by the licensee when in the act of weighing, sampling, or delivering producer's milk.

Section 3. All licenses issued under the authority of this law expire on June 30 of each year. They are required to be renewed on or before July 1 by mailing an application properly filled out and signed with required fee accompanying it. A notice to renew with application blank is sent out to each current license holder on or about June 15. In case such application blank is not received by June 25, the license holder is directed to write to UK Regulatory Services, Kentucky Agricultural Experiment Station, Lexington, Kentucky 40506, and request that one be sent. The renewal fee is shown on the application.

Section 4. In order that new operators may legally sample and weigh milk or sample and measure milk they shall make application on a form furnished by the Experiment Station and the fee called for on the application be paid. Applicants will be issued a ninety (90) day temporary nonrenewable license with approved procedures for weighing (measuring) and sampling milk for pay purposes. Every three (3) months of the year all persons holding a temporary license will attend a one (1) day training school and take a written examination, given by UK Regulatory inspectors and if completed successfully will be issued a permanent license. Temporary licenses held by samplers and weighers who fail to present themselves for a written examination after due notification or found unqualified will have their license revoked after which they cannot legally sample and weigh milk for producers.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

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**UNIVERSITY OF KENTUCKY**  
**Agricultural Experiment Station**  
**Division of Regulatory Services**  
**(As Amended at ARRS, February 13, 2001)**

**12 KAR 5:020. Testing.**

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.800, 260.825]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes uniform standards and approved procedures and equipment for the analysis of milk components by licensed laboratories and testers. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk testers. The function of this administrative regulation is to provide uniform standards, approved procedures, and equipment for analysis of milk components by licensed testers.]

Section 1. Laboratory Facilities and Equipment. (1) A licensed laboratory's facilities shall meet the criteria described in Chapter 2.3 of "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

(2) A licensed laboratory shall have established procedures for monitoring equipment performance and preventative maintenance. Specialized instrumentation shall be operated by the manufacturer's recommended procedures for operation and maintenance. Adequate records to document equipment performance monitoring and maintenance shall be kept. As applicable, equipment and supplies used by laboratories shall meet the criteria described in Chapter 2.4 of "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

Section 2. Approved Testing Methods. (1) A laboratory and tester licensed by the director shall be approved for the methods of analysis routinely used for milk component testing. If the laboratory and tester are approved for an electronic method of analysis, they shall also be approved for any intralaboratory reference method used to monitor the electronic equipment.

(2) Methods of analysis used for testing milk samples for pay purposes or as reference methods include:

(a) Methods in "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 17th Edition, 2000;

(b) Methods in "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992; and

(c) Methods of analysis scientifically proven to be acceptable and approved by the director.

Section 3. Electronic Equipment. (1) Laboratories using electronic milk testing equipment associated with approved procedures shall maintain the following supplies and records:

(a) A thermostatically-controlled, circulatory water-bath of suitable size to maintain milk samples in a temperature range of 40-43° C (104-109.4° F). A milk sample being warmed in the water-bath shall not:

1. Remain in the water-bath in excess of forty (40) minutes prior to being tested; or

2. Be tested for payment purposes if the sample "oils off" while in the water-bath; and

(b) An approved electronic component testing instrument including:

1. All required accessories and reagents; and

2. An instrument operation manual.

(2) Control samples. A minimum of four (4) control samples of unhomogenized milk shall be analyzed daily before routine testing begins. The control samples shall cover the component ranges of samples typically analyzed with the instrument. Control samples for milk fat analysis shall be in the fat range of two (2) to six (6) percent.

(a) The control samples shall be prepared and test results determined for each component tested for pay purposes by recognized procedures or those procedures approved by the director.

(b) Control samples shall be physically handled in a manner to ensure their integrity and stored in a temperature range of 0.5-4.4°C (33-40° F). Control samples to be stored more than seventy-two (72) hours shall be preserved with an approved preservative. Control samples shall be discarded if they appear to be churned, "oiled off" or spoiled.

(3) Daily performance checks. Written procedures shall be established to monitor electronic milk testing equipment for accuracy each day before testing begins. Minimum requirements for these procedures include:

(a) Zero check. Zero the machine for all components as prescribed by the instrument manufacturer. Run a single, unhomogenized milk sample through the machine at least eleven (11) times. Zero the machine again. Within two (2) cycles the instrument shall not deviate greater than 0.02 percent units from the original zero reading.

(b) Repeatability check. Ten (10) consecutive readings on a single, well-mixed, unhomogenized milk sample shall be made for each component being tested for pay purposes. The repeatability check shall be acceptable when the comparison range of ten (10) consecutive readings is within ±04 percent units [above or below 0.04 percent] for each of these components. The sample used between the zero checks in paragraph (a) of this subsection may be used for the repeatability check.

(c) Accuracy check. A subsample from each of the control samples shall be analyzed to obtain readings for each component tested for pay purposes. These results shall not differ from the control sample by more than ±0.09 percent units for total solids and ±0.05 percent units for each other component when compared to the established values of the control samples.

(d) Hourly check. An accuracy check as described in paragraph (c) of this subsection shall be analyzed on at least one (1) sample each hour during which samples are tested for pay purposes.

(e) Electronic instruments not meeting the prescribed testing criteria shall not be used to test permitted producer's samples for pay purposes. Deficiencies shall be investigated and corrective action taken. A record of any corrective action shall be maintained for two (2) years.

(4) Calibration requirements.

(a) Electronic instrument calibrations shall be required when:

1. The instrument is installed or significantly moved;
2. The daily performance checks fail and cannot be corrected by other means; and
3. When any part that may affect proper operation of the instrument has been replaced, rebuilt, or adjusted.

(b) A calibration shall be evaluated for accuracy:

1. At regular intervals not to exceed a thirty (30) day period; and
2. Using a minimum of eight (8) milk samples that shall cover the component ranges of samples typically analyzed with the instrument. These samples shall be in the milk fat range of two (2) to six (6) percent.

(c) Electronic instruments shall be calibrated according to the manufacturer's instructions using milk samples with known component values as determined by an approved reference method. Laboratories may use approved, commercially-prepared calibration samples in lieu of preparing their own reference calibration samples.

Section 4. Wild Tests. (1) A "wild" test is defined as a test result for a producer's bulk-tank milk sample that is dissimilar to other test results for the producer during the pay period and for which the cause of the difference(s) cannot be determined.

(2) Each laboratory shall have written specifications for determining a "wild" test. Specifications for "wild" tests shall not exceed 0.50 percent units when comparing milk fat test results between or among samples for a permitted producer.

(3) "Wild" tests shall not be used for pay purposes and shall be conspicuously identified within laboratory test records.

Section 5. Check Samples. Periodically, the director may provide check samples to a licensed laboratory for test result comparisons and monitoring purposes. A licensed tester at the laboratory shall test each sample for components used for pay purposes using approved methods routinely utilized by the tester. The tester's results shall be provided to the director within three (3) working days of receipt of the samples. The licensed laboratory is responsible for returning all check sample shipping containers and equipment to the director.

Section 6. Laboratory Records. (1) Laboratory records shall be kept in a manner consistent with 12 KAR 5:070, Section 2, and shall be retained for a two (2) year period.

(2) Equipment records. Records of the operation and maintenance of each electronic instrument shall include:

- (a) Maintenance records;
- (b) Daily performance check records; and
- (c) Complete calibration records.

(3) Test records. All records of tests to be used for pay purposes shall be original and recorded as tests are conducted.

(a) Records of retests and special tests shall be conspicuously identified.

(b) A licensed tester shall be responsible for the accuracy of test records for samples he tests for pay purposes.

Section 7. Sample Age. A permitted producer's sample being tested for pay purposes shall be tested within seventy-two (72) hours from the time of procurement, as identified on the sample container, unless the sample is preserved with an approved preservative.

Section 8. Hours of Operation. A licensed laboratory that is not open during the normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m. shall submit a monthly testing schedule to the director one (1) month in advance.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 17th Edition, 2000; and
- (b) "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky,

Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [The "Babcock Test," as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 2. The "Milkotester" method, as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 3. The "Infrared" method, as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat, protein, lactose, and total solids components of raw milk. Solids not fat (SNF) to be determined as the difference between total solids and milk fat as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984.

Section 4. (1) A person shall satisfactorily pass an examination issued by the director or his agents on the Babcock method of milk fat analysis prior to becoming a licensed tester using the Babcock method.

(2) A person shall satisfactorily pass an examination issued by the director or his agents on both the Babcock and Milkotester methods of milk fat analysis prior to becoming a licensed tester for the Milkotester method.

(3) A person shall satisfactorily pass an examination issued by the director or his agents on both the Babcock and "Infrared" methods of analysis prior to becoming a licensed tester for the "Infrared" method of component analysis.

(4) In order that new operators may legally test until such time as they may appear for examination, they may secure a temporary permit in lieu of license. To secure this permit it is necessary that application be made on the form furnished by the Agricultural Experiment Station and fee called for on the application form paid. Licenses will be issued to holders of permits who pass satisfactory examinations. Testers failing on their first examination may have their permits extended one (1) time only. Permits may be extended if a legitimate excuse for not appearing is received by the Agricultural Experiment Station within five (5) days after the date of the examination at which the holder was notified to appear. All other permits of testers notified for examination become null and void and their holders cannot legally test further.

Section 5. Each record sheet of milk fat tests results is required to be dated and signed by the licensed tester(s). If a book or sheet with columns for more than one (1) series of tests covering different periods of time is used, the licensed tester(s) is to date and sign each column immediately after tests recorded therein are finished. These original sheets are to be permanent records and are required to be kept on file with other records of weights and payments for twelve (12) months.

Section 6. Reference Methods. Milk buyers may purchase commercially prepared reference milk samples in lieu of making their own reference milk samples for the calibration of Milkotesters and Infrared milk analyzers for fat, protein, lactose, and total solid components of raw milk. Solids not fat (SNF) shall be determined as the difference between total solids and milk fat. Commercial laboratories preparing reference milk samples shall use only approved methods as listed below for each milk component.

(1) Reference methods approved by the director, or his agents, for milk fat analysis shall be the "Babcock" method and the "Mojonner" method as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984.

(2) Reference methods approved by the director, or his agents, for milk protein analysis shall be the "Kjeldahl" nitrogen method as described by "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984.

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(3) The reference method approved by the director, or his agents, for milk lactose analysis shall be the "Polarimetric Method" as described by "Methods of Analysis -- Association of Official Analytical Chemists, 14th Edition, 1984."

(4) All Kentucky milk buying locations testing milk to determine milk producer payments shall be licensed for and maintain the Babcock method of milk fat analysis as a back-up procedure in the event of instrument malfunction or failure to meet the required standards. It will also be necessary to calibrate Milkotester and Infrared milk analyzers by the Babcock method fat analysis in the absence of approved commercially prepared reference milk samples.

(5) The material incorporated by reference in this administrative regulation is available for inspection during working hours at the Agricultural Experiment Station offices in Lexington, Kentucky.

Section 7. All licensed milk testers testing dairymen's milk for payment shall carry out the following procedures to maintain their testers license:

(1) Prepare four (4) milk fat control samples in the fat range of two (2) to six (6) percent by approved chemical methods and use the samples each day the indirect instrument is used for fat analysis to pay producers. Payment on other milk components in addition to milk fat require daily control samples.

(2) Indirect instruments used for milk component analysis to pay dairymen shall be calibrated monthly, using UK Regulatory Services prescribed form, and submit a copy to UK Regulatory Services.

(3) Test nine (9) milk samples each month for milk fat analysis and ship the results and samples to the UK Regulatory Services laboratory in Lexington for fat analysis and comparisons.

(4) Submit a monthly milk fat testing schedule (days and hours) a month in advance to UK Regulatory Services unless your lab is open during normal working hours of 8 a.m. to 5 p.m. Monday through Friday.]

C. ORAN LITTLE, Dean and Director

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Agricultural Experiment Station  
Division of Regulatory Services  
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### 12 KAR 5:050. Inspections.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.825]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a basis for monitoring licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers to ensure that [if] these licensees are in compliance with KRS 260.775 to 260.845. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, testers, and weighers and samplers.]

Section 1. A milk handler, laboratory, and transfer station shall be inspected and evaluated for compliance with KRS 260.775 to 260.845. The director shall provide written notice to the appropriate licensee to correct any observed discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992.

Section 2. A sampler-weigher shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A sampler-weigher's records, equipment, samples, and procedures shall be examined to determine compliance.

(2) Milk samples obtained by a sampler-weigher may be collected and analyzed by the director to assist in the evaluation of the sampler-weigher's activities.

(a) Results of these analyses may be used to make comparisons among and between these samples. These comparisons may include the use of milk-component test results and other test results pertaining to milk quality and composition.

(b) Results of these analyses may be used to determine the amount of milkfat on a load of bulk milk as represented by the individual producer's bulk-tank samples and weights and as represented by the load sample and the sum of individual producers' bulk-tank weights. The deviation of the milkfat on the bulk milk load between these two (2) comparisons may, in part, determine the evaluation of the sampler-weigher.

(c) The deviation between the weight of the load of bulk milk represented by the sum of the individual producer's bulk-tank weights and the weight of the load of bulk milk as determined by an accurate scale or meter may, in part, determine the evaluation of the sampler-weigher. The scale or meter used in this determination shall be well maintained and approved by an accredited scale maintenance firm or appropriate government agency.

(3) An evaluation of an inspection of a sampler-weigher shall be awarded a grade. Grades given shall be A - excellent; B - good; C - poor; D - unsatisfactory. Criteria for awarding grades shall be established by the director and shall be printed on the inspection report. Noncompliance with KRS 260.775 to 260.845 and 12 KAR Chapter 5 may result in a D grade inspection.

(4) A sampler-weigher who receives three (3) "D" grade inspections within a twelve (12) month period shall be required to attend the next scheduled one (1) day sampler-weigher training school and take a written examination administered by the director. This shall not prevent the director from taking other actions under KRS 260.775 to 260.845, and 260.992 for a sampler-weigher who receives a D grade inspection or who otherwise is not in compliance with KRS 260.775 to 260.845 and 260.992.

Section 3. A tester shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A tester's records, equipment, and procedures shall be examined, in part, to determine compliance.

(2) The results of a tester's analyses may be compared to results of the director's analyses. The deviation between these results shall, in part, determine compliance. The director shall provide written notice to the tester and to the licensed laboratory employing the tester to correct any discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992. [For the purpose of enforcement of KRS 260.775 to 260.992, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director, upon presenting appropriate credentials, are authorized to enter, during normal business hours, any place where milk is being sold, or handled from Kentucky producers, to inspect records pertaining to the purchase and payment of milk, to obtain samples, data and records pertaining to weighing and sampling and testing of producers milk for pay purposes which is necessary to administer the law.]

Section 2. (1) Testers and samplers and weighers shall be inspected and graded on the accuracy of their operations and on their compliance with requirements of the law and administrative regulations under the law for which they are responsible. Criteria for awarding grades shall be established annually by the Examining Board, distributed to all licensees and applicants and printed on the inspection report. Grades given will be: A - Excellent; B - Good to Fair; C - Poor (probation); D - Unsatisfactory.

(2) Milk-weigher and samplers receiving three (3) D grades in one (1) year will be required to attend the haulers formal training school even though they may have previously attended. D grades may be given for improper temperature of sample storage, missed producer or load samples, poor inspections and other violations of the law. Continued poor performance of the weigher-sampler can result in his being called before the Creamery License Board for a hearing.

(3) Milk fat testers receiving two (2) unsatisfactory grades (C and D) in one (1) year may be put on probation and if unsatisfactory performance continues the tester may be called before the Creamery License Board to discuss why their license should not be suspended or



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revoked. Unsatisfactory grades may be given for poor inspection grades, substandard equipment, improper calibrations of equipment, fraudulent tests and other violations of the law.

Section 3. Buyers shall be inspected and rated on items for which they are responsible. Notice shall be given to correct any discrepancies. Unsatisfactory compliance and violations shall be handled in accordance with provisions of the law.}]

C. ORAN LITTLE, Dean and Director  
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UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
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12 KAR 5:060. Purchases from farm bulk tanks.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The function of this administrative regulation is to set up aids and safeguards to insure compliance with the law which states that buyers shall purchase milk from farm bulk tanks that is measured and sampled by licensed samplers and weighers only.]

Section 1. A licensed bulk milk handler or licensed transfer station shall review bulk milk delivery tickets to ensure compliance with KRS 260.775 to 260.845.

(1) A bulk-milk delivery ticket representing a load of milk for a permitted Kentucky producer shall be examined to ensure that a licensed sampler-weigher sampled and weighed the milk.

(2) A bulk-milk delivery ticket representing a shipment of milk from a producer shall be examined for compliance with 12 KAR 5:040, Section 4(3).

(3) Discrepancies shall be reported to the director.

Section 2. Personnel at a licensed laboratory who test permitted producers' samples for pay purposes shall review the information recorded on sample containers to ensure compliance with 12 KAR 5:040, Section 5(1). An agent of [A responsible person at] the laboratory shall report discrepancies to the director.

Section 3. Licensed Milk Handler Reporting Requirements. (1) Each licensed milk handler shall submit to the director an accurately-completed Kentucky Farm Milk Handlers Report each quarter with payment of inspection fee as required by KRS 260.821. The Kentucky Farm Milk Handlers Report form shall be provided to handlers by the director.

(2) Each licensed milk handler who issues payments to permitted producers shall submit to the director a current list of these permitted producers to whom payments are being issued. The list shall be submitted with the handler's annual license application and shall be updated when the handler submits its quarterly Kentucky Farm Milk Handlers Report. The listing shall include the following information about each permitted producer:

(a) Name;

(b) [Permit number issued by the Milk Safety Branch of the Kentucky Cabinet for Health Services;

(c)] Identification number issued by the handler if different from permit number; and

(c) [(d)] Mailing address [and street address if different from mailing address].

Section 4. A licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a copy of each permitted producer's bulk-tank conversion chart(s) to whom they issue payments. These charts may be reviewed by the director to determine if a permitted producer's bulk milk has been accurately weighed by sampler-weighers.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: "Kentucky Farm Milk Handlers Report", October 2000, Division of Regulatory Services.

(2) This material may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [Buyers who purchase milk held in farm bulk tanks shall keep a sampler and weighers license record file on all samplers and weighers who sample and measure milk in farm bulk tanks purchased by said buyer. This file shall show for each such person: his name; address; signature; description and the status of his license or permit to sample and weigh.

Section 2. Milk buyers shall check weigh tickets or records and certificates daily to insure that they are in accordance with the creamery license law and administrative regulations.}]

C. ORAN LITTLE, Dean and Director  
APPROVED BY AGENCY: November 15, 2000  
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UNIVERSITY OF KENTUCKY  
Agricultural Experiment Station  
Division of Regulatory Services  
(As Amended at ARRS, February 13, 2001)

12 KAR 5:070. Uniform standards for payment.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for uniform standards of payment for producer milk. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The functions of this administrative regulation is to provide uniform standards in the payment of producer milk based on milk component tests, for fresh samples, special samples and tests and required records of tests.]

Section 1. Number of Samples Required for Milk Component Testing for Pay Purposes. (1) Grade A milk producers shall be paid based on calculations of component tests from a minimum of five (5) bulk tank samples representative of and fairly evenly spaced throughout the monthly pay period.

(2) Manufacturing grade milk producers shall be paid based on calculations from a minimum of three (3) bulk tank samples representative of and fairly evenly spaced throughout the fifteen (15) day pay period.

(3) Payment calculations for producers with multiple farm bulk tanks shall be made for each tank separately or shall include a weighted-average computation. A daily weighted average shall be based on a test from a sample representing each farm bulk tank and a recorded weight for each farm bulk tank.

Section 2. Pay Records. (1) Written records shall be recorded legibly in ink by an agent of the handler and include the following information:

(a) Each page shall be signed and dated by a responsible person; and

(b) Changes or corrections to records shall be made by drawing a single line through the entry and writing the corrected entry nearby.



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Any changes or corrections shall be dated and initialed.

(2) Persons who use electronic systems to create, modify, maintain, or transmit records relating to milk samples, weights, tests, or payments shall employ procedures and controls designed to ensure the authenticity and integrity of the records. Such procedures and controls shall include the following:

(a) The ability to generate accurate and complete copies of records in printed and electronic form which are suitable for inspection, review, and copying by the director;

(b) Protection of records to enable their accurate and ready retrieval throughout the retention period of the records;

(c) Limiting electronic record access only to authorized individuals;

(d) Determination that persons who develop, maintain, or use electronic systems have the training and qualifications to perform assigned tasks; and

(e) The establishment of and adherence to written policies to deter record falsification. The policies shall hold a person responsible for his tasks relating to electronic records.

(3) The consolidated pay records shall be compiled from the sampler-weigher's weight records, valid laboratory test records, and other factors affecting the price. All records relating to payments shall be properly documented and retained for a two (2) year period.

(4) A statement that agrees with the pay record shall be provided to each permitted producer with the final payment for each month. The statement shall include the following:

(a) Dates covered by payment;

(b) Amount of milk paid for;

(c) Detailed pricing description;

(d) Test result(s) and component yield(s) used to calculate payment; and

(e) Any deductions. ~~((1) Special samples are those samples taken in emergencies to replace churned, spilled, soured or other regular samples determined as "wild." Two (2) or more of these daily samples shall be taken and tested; the samples may be composited or the results averaged. Results of tests on special samples are designated as special tests.~~

~~(2) A "wild" fat test for fresh samples is defined as one testing 0.50 percent above or below the patron's last average pay test and determined to not be watered.~~

~~(3) When a plant obtains a "wild" milk fat test it may be discarded and tests obtained from the next two (2) milk deliveries used in its place.~~

### Section 2. Age and Number of Samples Used for Pay Purposes:

~~(1) Fresh milk samples are samples not over twenty-four (24) hours old when received by the buyer.~~

~~(2) Manufacturing milk. Use the average of three (3) fresh milk samples for each producer per fifteen (15) day pay period as equally distributed over the pay period as possible.~~

~~(3) Grade A milk. Use samples from at least five (5) days production for each producer taken fairly evenly dispersed throughout the pay period.~~

~~(4) Fresh milk samples shall be tested preferably on the day sampled but within seventy-two (72) hours from the time of procurement; otherwise they must be preserved.~~

Section 3. Records of tests to be used as a basis for pay designated in these administrative regulations as legal test records shall consist of:

(1) Records of tests made on fresh samples;

(2) Records of retests and special tests.

### Section 4. (1) The requirements for legal test records shall be:

(a) All legal test records shall be original; that is recorded as they are read.

(b) All legal test records shall be recorded in ink or indelible pencil and each separate sheet dated and signed by a licensed tester.

(c) Changes or corrections to any legal test records shall be made by drawing a line through the incorrect test and entering the correct test and tester's initials nearby. (Erasures and write-overs are forbidden.)

(d) Records of retests and special tests shall be made on record sheets other than the regular (original) test record sheets.

~~(e) All legal test records shall be kept on file for twelve (12) months.~~

~~(2) Each licensed tester shall be responsible for the accuracy of the tests he makes and the accuracy and completeness of the records of these tests. Anything done or left undone to the test records to cause their authenticity to be questionable and therefore illegal is contrary to this administrative regulation.~~

Section 5. (1) The consolidated pay records are required to be made in a clear, permanent manner, properly arranged and identified. This consolidated record shall be accurately compiled from the original weight records, legal test records, base price used and other factors affecting the price. A statement shall be supplied each producer with payment for each pay period. The pay record and statement are required to agree and both are required to show: dates covered by payment, amount of milk received and paid for, the average butterfat test of this milk, the price per hundredweight paid, the gross value, deductions if any, and amount paid. Records including original weight records, pay records, test records, and evidence of payment having been made, shall be kept on file for twelve (12) months.

(2) All tests used as basis for pay shall be taken from and agree with the "legal test records" as described and specified above. It is illegal to "make-up" tests, to raise or lower tests, to manipulate tests or records or to use any test not documented by proper records.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

## COUNCIL ON POSTSECONDARY EDUCATION (As Amended at ARRS, February 13, 2001)

### 13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 156.070, 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.020(2B), 164.7874[(1), (3), (7)], 164.7877(3), 164.7879(1), (3), 164.7881(4)(a), (6)[, EO 98-1592]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the council to administer the [Commonwealth Merit Scholarship Trust Fund. EO 98-1592 renamed the scholarship as the] Kentucky Educational Excellence Scholarship (KEES) Program. KRS 164.7877(3) requires the council to administer the funds appropriated to the trust fund for the program. KRS 164.7874(13) [(7)] requires the council to develop and implement standards for high school curriculum as they relate to eligibility for participation in the program. KRS 164.7879(3)(c) requires the council to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the council to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the council to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the council to establish overall award levels for the program. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Academic year" is defined in KRS 164.7874(2).

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Authority" or "KHEAA" is defined in KRS 164.7874(4).

(6) "Council" or "CPE" is defined in KRS 164.7874(6) [(9)].

(7) "Eligible high school student" is defined in KRS 164.7874(7) [(10)].

(8) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating institution that a [the] student is attending.

(9) "GED" means a general educational development diploma awarded to a student.

(10) "High school" is defined in KRS 164.7874(11) [(13)].

(11) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3:340, Section 2(3)(b).

(12) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010 [156.070].

(13) "KEES curriculum" is defined in KRS 164.7874(13).

(14) "Participating institution" is defined in KRS 164.7874(17) [(15)].

(15) [(14)] "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the college board. [Scholastic Assessment Test administered to a Kentucky student seeking admission to a Kentucky postsecondary education institution.

(15) "Scholarship curriculum" is defined in KRS 164.7874(7).]

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible student's grade point average, as defined in KRS 164.7874(10) [(12)], for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F;"

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) Notwithstanding the provisions of paragraph (a)1 of this subsection, for an eligible high school [a] student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned [in paragraph (a)1 of this subsection] shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F."

(3) The grade point average reported for an eligible high school [each] student for each academic year shall include all information as set forth in KRS 164.7885(1) and in the manner as the KDE or the KHEAA shall require.

[(4) For the 1998-1999 and 1999-2000 school years, the grade point average reported for each eligible student shall be based on the grade scale in place in that school during the 1997-98 academic year.

[(5) During the 1999-2000 fiscal year, the council shall request the assistance of the Kentucky Board of Education to develop minimum threshold levels for letter grades to be used in 2000-2001 for the purposes of this program.]

Section 3. KEES [Scholarship Curriculum]. (1) A student shall complete the KEES [scholarship] curriculum established in this section to qualify for the base scholarship award.

(a) Except as provided in paragraph (b) of this subsection, the KEES [scholarship] curriculum shall consist of the courses and electives required by this paragraph.

1. For a student enrolled in high school during the 1998-1999 academic year, the curriculum required in 704 KAR 3:305, Section 1 or 2, as appropriate without restriction on the type of electives taken.

2. For a student enrolled in high school during the 1999-2000 and 2000-01 academic years and who is required to meet the curriculum standards in 704 KAR 3:305, Section 1, the eight (8) electives required by 704 KAR 3:305, Section 1, shall be taken in the areas and according to the standards established in subparagraph 4 of this paragraph.

3. For a student enrolled in high school during 1999-2000 and for each year thereafter who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in subparagraph 4 of this paragraph.

4. The following subject areas and standards shall be applicable for electives. An elective in:

a. Social studies, science, mathematics, English/language arts, or arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

b. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

c. Foreign [Nonnative] languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.

d. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(b) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

1. The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations"; or

2. The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(2) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES [scholarship] curriculum.

Section 4. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the council.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

(3) Pursuant to KRS 164.7881(6), the following academic programs shall be approved as five (5) year baccalaureate degree programs:

(a) Architecture (04.0201);

(b) Landscape architecture (04.0601); and

(c) Engineering (14.0101, 14.0301, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1701, 14.1801, 14.1901, 14.2101, 14.9999.01).

Section 5. Base Scholarship Award. [Beginning July 1, 1998:] A Kentucky resident enrolled in a Kentucky high school who is eligible for a base scholarship award shall be limited to a maximum of four (4) base scholarship awards.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14

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1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's eighteenth (18) birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(4)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify KHEAA of the student's eligibility.

Section 8. Supplemental Award. An eligible high school [A] student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Administrative Responsibilities and Expenses of Pro-

gram. (1) The CPE annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson **Kentucky Educational Excellence [Commonwealth-Merit]** Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The KDE and the KHEAA [authority] annually, by June 15 [April 1], shall provide to the CPE a budget proposal indicating the amount of funds requested and a detailed listing of the expenditures necessary to operate the program.

(3) The CPE shall notify the KDE and the KHEAA [authority] of the amount of funds available for the next fiscal year no later than April 30 of the fiscal year preceding the fiscal year that funds are to be made available.

(4) The CPE shall develop an allotment schedule for the release of the administrative funds and shall notify the KDE and the KHEAA of that schedule.

[Section 10. Incorporation by Reference. (1) "Kentucky's Learning Goals and Academic Expectations", July 1994, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHARLES WHITEHEAD, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 11, 2000 at 4 p.m.

**REVENUE CABINET**

**Department of Law**

**Division of Tax Policy**

(As Amended at ARRS, February 13, 2001)

103 KAR 5:160. Property valuation administrator office employees: payment of leave upon separation.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 131.130(1), 132.370(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.370(9)

[, as amended by the 2000 General Assembly,] requires the Revenue Cabinet to promulgate administrative regulations which allow property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death. **This administrative regulation establishes the procedure for receiving the lump-sum payments.**

Section 1. Payment of Annual Leave and Compensatory Time Upon Separation. (1) If a property valuation administrator or deputy property valuation administrator is separated from employment as a result of termination, resignation, retirement, or death, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by 101 KAR 3:015(2)(h). Following payment of annual leave upon separation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(2) A property valuation administrator or deputy property valuation administrator who reverts to the classified or unclassified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated annual leave in the receiving agency.

(3) A property valuation administrator or deputy property valuation administrator may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if the successor employer has agreed to credit him with an equal amount of annual leave.

(4) Upon separation from state service, a property valuation administrator or deputy property valuation administrator shall be paid for all unused compensatory time at the greater of the:

(a) Regular hourly rate of pay; or

(b) Average regular rate of pay for the final three (3) years of employment.

(5) Upon the death of a property valuation administrator or deputy property valuation administrator, his estate shall be entitled to receive a lump sum for the unused portion of his accumulated annual leave and compensatory time.

F. MICHAEL HAYDON, Secretary

APPROVED BY AGENCY: December 14, 2000

FILED WITH LRC: December 14, 2000 at 1 p.m.

# KENTUCKY RETIREMENT SYSTEMS (As Amended at ARRS, February 13, 2001)

## 105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 61.546, 78.616 [16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852]

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.546 provides for retirement service credit for unused sick leave of members of the Kentucky Employees Retirement Systems and the State Police Retirement System. KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This administrative regulation provides the requirements for participation in the program by individual county agencies, the calculation of the service credit and the payment of the cost of the credit by the employer. This administrative regulation also sets out the formula for prorating sick leave when it is earned by a member partly under SPRS, partly under KRS hazardous duty coverage and partly under the Kentucky Employees Retirement System nonhazardous coverage.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78.616(5).

(2) "Standard plan" means the sick leave program as described in KRS 61.546 or 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78.616 by adopting an order appropriate to the agency [and by completing

and filing the form for the sick leave program provided by the retirement system].

(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.

(2) The agency shall certify to the retirement system that the program shall be universally administered.

(3) The agency shall pay all costs of the program.

(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.

(5)(a) If an agency participating in the County Employees Retirement System [if the agency] has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan.

1. An agency adopting the standard plan may elect:

a. To purchase credit only for the first six (6) months of accumulated sick leave;

b. To purchase credit for the first six (6) months and to pay fifty (50) percent of the cost for service above six (6) months; or

c. To purchase credit for all accumulated sick leave.

2. An agency which elects to pay only for the first six (6) months of accumulated sick leave may at a later date elect to pay fifty (50) percent or all of the cost of service above six (6) months. An agency which elects to pay for the first six (6) months and fifty (50) percent of the cost for service above six (6) months, may at a later date elect to pay for all accumulated sick leave.

3. If the agency adopted the standard plan prior to July 1988, it may choose to adopt the alternate plan.

(b) Agencies participating in the Kentucky Employees Retirement System or the State Police Retirement System shall provide sick leave credit for all accumulated sick leave.

(c) Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement:

(1) The agency participating in the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System shall certify the unused sick leave credit which the member has accumulated on the Sick Leave Authorization, Form 6500 [24, dated April 1984].

(2)(a) The retirement system shall determine the number of days of credit and divide the number of days by twenty-one (21) which shall be the average number of working days in a month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month.

(b) For an agency [agencies] participating in the County Employees Retirement System, the cost of the credit, determined by the formula described in KRS 61.552(9), [for up to six (6) months of service] shall be paid by the agency within thirty (30) days of notification by the retirement system.

(3)(a) If the total accumulated sick leave is greater than six (6) months and the agency does not pay for service greater than six (6) months, the member may purchase some or all of the additional months by paying the cost, determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

(b) If the total accumulated sick leave is greater than six (6) months and the agency pays fifty (50) percent of the cost of the additional months, the employee shall receive credit for the additional months if the employee pays the cost determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

Section 4. An agency [Agencies] adopting the alternate plan, shall also certify the maximum number of sick leave days that an employee may accumulate prior to termination. [Upon a member's termination:]

(1) The agency shall compensate the member for all accumulated sick leave up to the maximum allowed upon termination. If the member is a classified employee of a school board, the agency shall compensate the member for accumulated sick leave upon the member's retirement. The rate of compensation for each day shall be based on the member's current rate of pay.

(2) Each month, the agency shall withhold employer and em-

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ployee contributions from the sick leave compensation of all employees who terminate and shall remit the contributions along with the Form 6501 [24-A, alternate sick leave certification dated August 1992:] for each employee. The forms and contributions deducted during the month shall be sent to the retirement office within ten (10) days following the end of the month. The contributions and compensation shall not be reported with the regular payroll.

(3) If the member has one (1) or more months of service credit as determined in Section 3 of this administrative regulation, the service shall be added to the member's total service credit.

(4) Compensation and service shall also be included in the member's final compensation as follows:

(a) The member's sick leave credit in months and the compensation for those months shall be included in the [last] fiscal year with the highest average monthly salary used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.

(b) When service credit in the [last] fiscal year with the highest average monthly salary has reached twelve (12) months, the remaining months of service and compensation shall be included in the [first] fiscal year with the lowest average monthly salary used in his final compensation until service credit in the fiscal year has reached twelve (12) months.

(c) When service credit in [both] the two (2) [last-and-first] fiscal years with the highest and lowest average monthly salary used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the [first] fiscal year with the lowest average monthly salary of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5. An employee who has service credit in the Kentucky Employees Retirement System as hazardous and nonhazardous or who has service credit in both the Kentucky Employees Retirement System and the State Police Retirement System shall have his accumulated sick leave prorated between the systems and between the hazardous and nonhazardous accounts based on the ratio of his service in each account, including purchased service, and to his total service credit.

Section 6. Incorporation by Reference. (1) The following material is [forms [required by this administrative regulation] are] incorporated by reference:

(a) Form 6500, Sick Leave Authorization (rev. 11/00); and

(b) Form 6501, Alternate Sick Leave Authorization (rev. 11/00).

(2) This material [These materials] [and] may be inspected, copied, or obtained, subject to applicable copyright law, from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 14, 2000 at 3 p.m.

**KENTUCKY RETIREMENT SYSTEMS**  
**(As Amended at ARRS, February 13, 2001)**

**105 KAR 1:300. Determination of service credit for classified employees.**

RELATES TO: KRS 78.615

STATUTORY AUTHORITY: KRS 61.645(9)(e), 78.615

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 78.615**

[2000-Ky. Acts ch. 299, sec. 4] creates a new calculation for determination of retirement service credit for classified employees of local school boards and requires the Board of Trustees of the Kentucky Retirement Systems to promulgate an administrative regulation to allow classified employees of local school boards who work less than a complete school year to purchase service credit to complete the year. This administrative regulation establishes the formulas to be used in determining service credit and for the purchase of service credit.

Section 1. For school years beginning July 1, 2000 and after, upon the employee's completion of the school year, termination or death, whichever is earlier, the retirement system shall determine each employee's annual service credit as follows:

(1)(a) The employee's actual days worked, as reported by the school board, shall be divided by twenty (20) to determine the number of months and fractional months worked.

(b) The employee's total wages shall be divided by the hourly rate reported by the school board to determine the total number of hours worked.

(c) The employee's total hours shall be divided by the employee's months and fractional months worked to determine if the employee averaged at least eighty (80) hours per month.

(2) If the employee does not average at least eighty (80) hours per month, the service credit shall be disallowed and all employer and employee contributions shall be refunded. Months in which the employee worked eighty (80) or more hours may be purchased as provided in KRS 61.552.

Section 2. For school years beginning July 1, 2000 and after, each school board employee whose employment averages eighty (80) or more hours per month over their actual days worked as determined in Section 1 of this administrative regulation, shall be credited with total service credit for the school year determined as follows:

(1) If the employee was contracted to work at least 185 days and worked at least 180 days, the employee shall be credited with twelve (12) months of service credit.

(2) If the employee worked fewer than 180 days of a 185 day contract or if the employee was contracted to work fewer than 185 days, the employee shall receive months of service credit determined by dividing the actual number of days worked by 185 and multiplying the percentage by twelve (12) months. The number of months of service shall be rounded to the nearest whole month, except that the employee shall not receive twelve (12) months unless the employee works 185 or more days during the school year.

(3) If employee retires prior to the end of the fiscal year, the employee's service credit for the year shall be reduced by eight (8) percent [of twelve (12)] for each month prior to July. The employee shall not receive fewer months than the number determined by dividing the employee's actual days worked, as reported by the school board, by twelve (20) and rounding to the nearest whole month.

Section 3. (1) For the school year beginning July 1, 2000 and after, if the employee worked fewer than 180 days of a 185 day contract, the employee may purchase months needed to complete the year by paying 100 percent of the actuarial cost of the service.

(2) The actuarial cost shall be determined using the delayed contribution payment in KRS 78.510(30) except that:

(a) For determining delayed contribution payments for classified employees of school boards, the cost shall be based on the classified employee's final compensation as of the date payment is due;

(b) For determining delayed contribution payments for employees participating in one of the other state administered retirement plans who are eligible to purchase service under this section, the higher of the employee's current rate of pay, final rate of pay or final compensation shall be used; and

(c) For service credit purchased under this section, the employee shall pay 100 percent of the cost calculated under delayed contribution payment.

Section 4. If the employee was contracted to work fewer than 185 days and does not earn twelve (12) months service, the employee may purchase additional months of service as provided under KRS 61.545.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 14, 2000 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD  
(As Amended at ARRS, February 13, 2001)

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS Chapter 324A [324A.010, 324A.035, 324A.040]

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), and KRS Chapter 324A, [to establish policies and procedures, and to protect the public. The function of] This administrative regulation defines [is to define the] terms used in 201 KAR Chapter 30.

Section 1. (1) "Board" is defined at KRS 324A.010(4). [means the Kentucky Real Estate Appraisers Board.]

(2) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.

(3) "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals of one (1) to four (4) residential units and nonresidential real property with [that has] a transaction value less than \$250,000, in connection with federally and nonfederally related transactions.

(4) "Classroom hour" means fifty (50) minutes actual classroom instruction.

(5) "Federal financial institutions regulatory agencies" means the:

- (a) Board of Governors of the Federal Reserve System;
- (b) Federal Deposit Insurance Corporations;
- (c) Office of the Comptroller of the Currency;
- (d) Office of Thrift Supervision; and
- (e) National Credit Union Administration.

(6) "Federally related transaction" means a real estate-related financial transaction that a federal financial institutions regulatory agency or the Resolution Trust Corporation:

- (a) Engages in; [or]
- (b) Contracts for; or
- (c) Regulates; and
- (d) For which it requires the services of a:
  1. Certified general real property appraiser;
  2. Certified residential real property appraiser; or
  3. Licensed real property appraiser.

(7) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.

(8) "Licensed nonfederal real property appraiser" means an individual [appraiser] who has fulfilled the requirements for licensure established by the board to appraise nonfederally related transactions.

(9) "Real estate-related financial transaction" means a [any] transaction that involves the:

- (a) Sale, lease, purchase, investment in or exchange of real property, including an interest [interests] in property, or the financing thereof;
- (b) Refinancing of real property, or an interest [interests] in real property; and
- (c) Use of real property, or an interest [interests] in property, as security for a loan or investment, including a mortgage-backed security [securities].

(10) "Residential" means one (1) to four (4) residential units.

(11) "Trainee real property appraiser" means an individual [appraiser] who has fulfilled the requirements for licensure as a trainee real property appraiser established by the board to appraise real property in connection with federally and nonfederally related transactions.

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD  
(As Amended at ARRS, February 13, 2001)

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3) to 324A.052 [-324A.045, 324A.065]

STATUTORY AUTHORITY: KRS [324A.030,] 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351). KRS 324A.035(1) and (3) require the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. [Chapter 324A to establish policies and procedures, and to protect the public. The function of] This administrative regulation establishes [is to establish] the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

- (1) Certified general real property appraiser;
- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Trainee real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units, regardless of transaction complexity or value, and nonresidential real property with [that has] a transaction value less than \$250,000 [regardless of transaction complexity or value].

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

- (a) Noncomplex, one (1) to four (4) residential units with [that have] a transaction value [of] less than [then] \$1,000,000;
- (b) Complex, one (1) to (4) residential units with [that have] a transaction value [of] less than \$250,000; and
- (c) Nonresidential real property with [that has] a transaction value [of] less than \$250,000.

(4)(a) Trainee. [Trainees:] A trainee real property appraiser:

1. May perform an appraisal of property that [appraisals of these properties which] the supervising appraiser of the trainee is permitted to appraise; and

2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log [logs] shall be maintained for each supervising appraiser.

(c) The trainee [real property appraiser] shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The trainee [real property appraiser] shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been [be] licensed or certified by the board for a period of one (1) year;

2. Be [and] in good standing with the board; and



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3. [shall] Be responsible for the training and supervision of the trainee [real-property appraiser].

(f) The supervising appraiser shall [by]:

1. ~~Accept~~ [Accepting] responsibility for ~~a trainee's~~ appraisal ~~report~~ [reports by the trainee real property appraiser] by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;

2. ~~Review~~ [Reviewing] reports by the trainee; [real-property appraiser; and]

3. Personally ~~inspect~~ [inspecting] each appraised property ~~and the comparable sales with the trainee~~ [real-property appraiser] ~~on the trainee's first fifty (50) real property appraisal assignments to insure that the trainee~~ [until the supervising appraiser determines that the trainee real property appraiser] is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040 for the property type; [-]

4. Allow a trainee [real-property appraiser] who has completed the fifty (50) appraisal assignments required by ~~subparagraph 3 of this paragraph~~ [201 KAR 30:030, Section 2 (4)(f)3] to inspect properties located within fifty (50) miles of the supervisor's [supervisors'] office without being accompanied by the supervisor, if [provided] the supervisor has determined that the trainee [real-property appraiser] is competent to perform an appraisal [such appraisals].

5. ~~For the twelve (12) months following the date of issuance of a trainee license, accompany the trainee and~~ [personally] inspect each appraised property and the comparable sales [with the trainee real property appraiser] on each [all] appraisal assignment [assignments] located more than fifty (50) miles from the supervisor's office; [within twelve (12) months following the date of issuance of the trainee real property license;]

6. ~~[(g) A supervising appraiser shall:~~

1. ~~Be limited to a maximum of three (3) real property trainees at a time; and~~

2. ~~Immediately~~ [Notify the board immediately] when the supervision of a real property trainee has terminated.

~~(g) A person otherwise qualified for supervising appraiser who has been~~ [(h) Persons otherwise qualified to be supervising appraisers who have been] disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation [at the option of the board]:

1. ~~Be~~ [Prohibited from supervising trainees] [trainee real property appraisers];

2. ~~Be~~ [Limited to the number of trainees to] [trainee real property appraisers they may] supervise; or [and]

3. Be required to take additional courses approved by the board before being permitted to supervise a trainee [real-property appraiser].

(h) ~~[(f)]~~ A trainee [real property appraiser] shall submit to the board two (2) complete summary appraisal reports.

1. ~~The first report~~ [reports] shall be submitted to the board six (6) months [and twelve (12) months] following the date of issuance of the trainee [real property] license. ~~The second report shall be submitted to the board twelve (12) months following the date of issuance of the trainee license.~~

2. ~~If necessary to determine the competency of the trainee,~~ the board shall [have the right to] request additional reports from the trainee [real-property appraiser].

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by [the provisions of] 201 KAR 30:050 and 201 KAR 30:060; and

(2) Applies to the board on the "Appraiser License/Certification Application Form."

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (September, 2000 [July, 1992]) is incorporated by reference.

(2) ~~This material~~ [It] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205 [2624 Research Park Drive, Room 308, Lexington, Kentucky 40511-8480], [telephone:] (502) 573-0091, Monday through Friday [(606) 246-2017], 8 a.m. to 4:30 p.m.[-Monday through Friday;]

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD  
(As Amended at ARRS, February 13, 2001)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(1)(i) [(10)], 12 CFR 225.62 to 225.67 [225.64, 225.65], 12 USC 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)[-12 CFR 225.64, 225.65, 12 USC 3331, 3336, 3339]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice. ~~The standards~~ [This administrative regulation establishes requirements that] are no more stringent than [the] federal law requirements.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."

Section 2. The following certificate holders or licensees [A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee real property appraiser] shall comply with the "Uniform Standards of Professional Appraisal Practice":

(1) A certified general real property appraiser;

(2) A certified residential real property appraiser;

(3) A licensed real property appraiser; and

(4) A trainee real property appraiser.

Section 3. An appraisal report [that is] made with regard to a federally related transaction shall be in writing.

Section 4. Incorporation by Reference. (1) "Uniform Standards of Professional Appraisal Practice (2001 edition) [(1997 edition);]" Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference.

(2) ~~This material~~ [It] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205 [2624 Research Park Drive, Room 308, Lexington, Kentucky 40511-8480], [telephone:] (502) 573-0091 [(606) 246-2017], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) ~~This material may also~~ [It may] be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, [telephone:] (202) 347-7722.

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.



KENTUCKY REAL ESTATE APPRAISERS BOARD  
(As Amended at ARRS, February 13, 2001)

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

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3); 324A.040(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3) (d), (e), and (f) require [requires] the board to establish by administrative regulations requirements for experience, examination of applicants, and [the] continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or [and] licensed real property appraiser shall pass an examination [that is] specific for the certification or license applied for and [has been] approved by:

- (1) The board; and
- (2) The Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 180 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction.

(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) hours of approved instruction.

(4) An applicant for a license as a trainee real property appraiser shall have completed seventy-five (75) hours of approved instruction.

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction shall have been completed prior to examination.

(6) The required hours of instruction for every applicant shall:

(a) Include at least a minimum:

1. [include at least] Fifteen (15) hours related to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

2. [After September 15, 2000:] Fifteen (15) hours related to basic income.

(b) Be completed in an orderly progression of appraisal concepts and coursework commencing with basic appraisal courses and progressing to advanced courses.

1. The initial instructional course shall cover basic principals of appraising. [;]

2. The fifteen (15) hours of instruction [required by this section] on the Uniform Standards of Professional Appraisal Practice shall not be taken until after the instructional course covering basic principals of appraising has been completed.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of

one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

- (a) Influences on real estate value;
- (b) Legal consideration in appraisal;
- (c) Types of value;
- (d) Economic principles;
- (e) Real estate markets and analysis;
- (f) Valuation process;
- (g) Property description;
- (h) Highest and best use analysis;
- (i) Appraisal statistical concepts;
- (j) Sales comparison approach;
- (k) Site value;
- (l) Cost approach; and
- (m) Income approach, including:
  1. Gross rent multiplier analysis;
  2. Estimation of income and expenses;
  3. Operating expense ratios; and
  4. Direct capitalization;
- (n) Valuation of partial interests;
- (o) Appraisal standards and ethics; and
- (p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

- (a) It is approved by the board;
- (b) It complies with the provisions of this administrative regulation;
- (c) It is documented by the applicant;
- (d) It is a course that requires at least fifteen (15) hours of instruction; and

(e) The [An] applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

1. File a written request with the board for receipt of credit;
2. Document the appraisal courses taught by title, date, place taught, and length of course; and
3. Elect to receive credit for either the:
  - a. Classroom hour requirement; or
  - b. Experience requirement.

(3) The board shall grant credit for courses to an applicant if [in which]:

(a) The applicant received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination [that was] administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

- (a) Colleges or universities;
- (b) Community or junior colleges;
- (c) Real estate appraisal or real estate related organizations;
- (d) State or federal agencies or commissions
- (e) Proprietary schools; or
- (f) Other providers.

(2) A provider shall be approved by the board if the provider:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience.

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This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(d) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(e) For certification as a general real property appraiser, at least 1,500 hours of [the] appraisal experience shall consist of nonresidential appraisal experience.

(2)(a) An applicant shall verify experience credit on forms approved and provided by the board.

(b) The board may request reports, file memoranda, and other documentation of appraisal experience.

(3) Acceptable appraisal experience shall include:

- (a) Fee and staff appraisal;
- (b) Ad valorem tax appraisal;
- (c) Review appraisal;
- (d) Appraisal analysis;
- (e) Real estate counseling;
- (f) Highest and best use analysis;
- (g) Feasibility analysis or study; and
- (h) Teaching of appraisal courses as provided by this section.

Section 7. Continuing Education: Number of Hours Required. (1) Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:

(a) Complete fourteen (14) hours of approved continuing education each license year; and

(b) Furnish the board with proof of compliance.

(2) Trainee real property appraisers who remain in this classification in excess of two (2) years shall be required in the third and successive years to:

(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and

(b) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for:

(a) Approved continuing education courses; or

(b) For participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

- (a) Teaching;
- (b) Program development;
- (c) Authorship of textbooks; or
- (d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated by Reference. (1) "Appraisal Education Provider Application Form" (2000 [1992]) is incorporated by reference.

(2) This material [H] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205 [2624 Research Park Drive, Room 368, Lexington, Kentucky 40511-8480], [telephone:] (502) 573-0091 [(606) 246-2017], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.

## KENTUCKY REAL ESTATE APPRAISERS BOARD (As Amended at ARRS, February 13, 2001)

### 201 KAR 30:060. Fees administrative regulation.

RELATES TO: KRS [324A.020;] 324A.035, 324A.040, 324A.045, 324A.065, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, [324A.040;] 324A.045(2), 324A.065

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351). KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser. [~~KRS Chapter 324A to set policies and procedures and to protect the public. The function of~~] This administrative regulation establishes [~~is to establish the~~] fees for initial application, annual renewal, roster, and examination, for both [~~for~~] federally and nonfederally related transactions.

Section 1. A fee [Fees] required by KRS 324A.065(1) and (2) shall be submitted with the application or request.

Section 2. (1) The renewal date for a certificate or license [~~certificates and licenses~~] shall be July 1 of each calendar year.

(2) The fee [fees] required for annual renewal of a certificate or license [~~certificates and licenses~~] shall be submitted by each certificant or licensee [~~certificants or licensees~~] on or before July 1 of each calendar year.

Section 3. The roster fee shall be paid with the application or renewal fee.

Section 4. Examination fees shall be paid prior to an examination.

Section 5. Fees. (1) Federally-related transactions:

- (a) Initial application fee: \$212 [200];
- (b) Examination fee: \$200;
- (c) [~~An~~] Annual certificate or licensure fee: \$212 [200];
- (d) Duplicate certificate fee: ten (10) dollars;
- (e) Certificate correction fee: ten (10) dollars;
- (f) Roster fee not to exceed fifty (50) dollars.

(2) Nonfederally-related transactions:

- (a) Initial application fee: \$100;
- (b) Examination fee: \$100;
- (c) An annual certificate or licensure renewal fee: \$100;
- (d) Duplicate certificate fee: five (5) dollars;
- (e) Certificate correction fee: five (5) dollars;
- (f) Roster fee: twenty-five (25) dollars.

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.

## KENTUCKY REAL ESTATE APPRAISERS BOARD (As Amended at ARRS, February 13, 2001)

### 201 KAR 30:120. Temporary appraisal licenses and certificates.

RELATES TO: KRS 324A.035(1), (3), 324A.065(1), 324A.075, 12 CFR 225.64, 225.65, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.065(1), [324A.075]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require [requires] the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. KRS 324A.065(1) requires [authorizes] the board to establish fees. KRS 324A.075

authorizes the board to establish requirements for reciprocity. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates.

Section 1. A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in that [such] state shall [may] apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of fifty (50) dollars and filing with the board a notarized application on a form prescribed by the board. The completed application shall include the following information [for such purpose which shall set forth and include]:

(1) The applicant's name, address, Social Security number and [such] other information [as may be] necessary to identify the applicant;

(2) A statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:

(a) The applicant's name, business name and address;

(b) The type of license or certificate held by the applicant and the license or certificate number;

(c) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(d) Whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and

(e) A complete record of [any] disciplinary actions taken or disciplinary proceedings pending against the applicant;

(3) An irrevocable consent that service of process in an [any] action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery [of the process] on the executive director of the board;

(4) A statement that the applicant:

(a) Has read and agrees to abide by [all] appraiser laws and rules in this state; and

(b) Agrees to cooperate with any investigation initiated by the board at the direction of the board, including:

1. Supplying relevant documents; and

2. Personally appearing before the board or its investigators;

(5) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing the [such] appraisal assignment, but [shall not require] the applicant shall not [to] divulge [any] information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

(6) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this state.

Section 2. (1) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his application, if:

(a) He has filed a properly completed application;

(b) He has submitted the required fee with the application;

(c) He has satisfied the board as to his qualifications, eligibility, and moral fitness for temporary licensing or certification privileges; and

(d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(2) Application for a temporary practice certificate or license shall be made on board form, "Nonresident Application for Temporary Appraiser Permit", incorporated by reference.

Section 3. (1) Except as provided by subsection (2) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon the earlier of the:

(a) Completion of the appraisal assignment described in the application for temporary licensing; or

(b) Expiration date set forth in the temporary practice certificate or

license.

(2) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or certification privileges granted under an applicant's temporary practice certificate or license, if he shows to the board's satisfaction that, notwithstanding [his] diligent attention to the appraisal assignment, additional time is needed to complete the assignment.

Section 4. A person [Persons] granted temporary licensing or certification privileges under the provisions of this administrative regulation shall not advertise or otherwise claim to be [hold themselves out as being] a Kentucky state-licensed or state-certified appraiser.

Section 5. Incorporation by Reference. (1) "Nonresident Application for Temporary Appraiser Permit (2000 [October 1992])" is incorporated by reference.

(2) This material [form] may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205 [2624 Research Park Drive, Room 308, Lexington, Kentucky 40511-8488], [telephone:] (502) 573-0091 [(606) 246-2017], Monday through Friday, 8 a.m. to 4:30 p.m.; Monday through Friday.]

GEORGE K. COX, Chair

APPROVED BY AGENCY: September 22, 2000

FILED WITH LRC: November 13, 2000 at 4 p.m.

#### PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank

Environmental Assurance Fund

(As Amended at ARRS, January 9, 2001 and

at IJC on Agriculture and Natural Resources, January 31, 2001)

#### 415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-100, 224.60-105(1), (2), (4), 224.60-110, 224.60-115, 224.60-120(5), 224.60-130(2), (4), 224.60-135, 224.60-140(2), (3), (5)-(15), (17), (18), (19), 224.60-142, 224.60-155, 224.99-010(4), (9), 224.99-020, 224.99-030, 40 CFR Parts 280, 281, 42 USC 6991a-e, g

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a) through (e) require the fund to establish the procedures to administer the fund. This administrative regulation establishes the procedures for an eligible petroleum storage tank owner or operator to make a claim to the office for reimbursement or payment of the cost of corrective action.

Section 1. Application for Assistance. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for assistance with the office.

(2) Application shall be made on the Application for Assistance Form. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If the performance of corrective action is not necessary for closure, the facility shall not be eligible for reimbursement of corrective action [actions] costs from the fund.

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section, the office shall:

1. Approve the Application for Assistance;

2. Establish the amount to be obligated; and

3. Determine the appropriate account.

(b) Reimbursement pursuant to an approved Application for Assistance shall be restricted to documented costs approved by the secretary or the secretary's designee.

(c) The approved Application for Assistance may be used as a guarantee of payment by the owner or operator to a contractor per-

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forming corrective action to the extent of the amount obligated and approved by the secretary.

(4)(a) The office shall amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of the cost of corrective action, if the office determines the action is necessary to guarantee payment of eligible costs [costs] and to comply with 401 KAR Chapter 42, and if the applicant:

1. Submits a written request and supporting documents explaining the need for additional corrective action, and setting forth the following unit costs, in compliance with 415 KAR 1:110, for:

- a. Personnel;
- b. Sampling and laboratory testing;
- c. Excavation;
- d. Haulage;
- e. Treatment or disposal of contaminated soil or water; and
- f. Other expenses necessary to comply with 401 KAR Chapter 42;

and

2. Provides, within thirty (30) days of a request received by certified mail, additional information or documentation requested by the office, unless both parties agree in writing, within the thirty (30) day period, to an extension of time.

(b) The office shall deny the request [claim] for an additional obligation if the applicant fails to provide the requested information.

(c) Payment shall not exceed the amount obligated, in writing, by the office.

~~[(d) Payment shall not be made for the cost of additional corrective action incurred prior to approval.]~~

(5) Payment under the terms of the approved Application for Assistance shall be made when the eligible applicant submits a claim form, and a certification that the cost was reasonable and necessary to comply with 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114.

(6) The office may request additional information and documentation from the applicant if necessary to verify eligibility or account placement. Failure by the applicant to provide the requested information and documentation within thirty (30) ~~[sixty (60)]~~ days of the receipt of the request shall cause the application to be denied. The office shall grant an extension of thirty (30) days for good cause demonstrated by the applicant. Denial of the Application for Assistance under this subsection shall not prevent the owner or operator from reapplying if the requested information becomes available.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the office for the costs of corrective action on the Claim Request Form, the Soil Disposal/Treatment Claim Form, or the Capital Equipment Claim Form ~~[and Listing of Invoices form]~~. The claim shall contain:

(a) The Invoice Listing Form and original invoices for costs for which payment is sought;

~~(b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;~~

~~(c) Documentation that the release has been reported to the cabinet; and~~

~~(c) [(d)] Laboratory analysis substantiating the necessity of:~~

1. The corrective action, except for initial abatement and free product recovery as required by 401 KAR 42:060; and

2. Off-site disposal of contaminated soil; and

~~(d) [(e)] Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.~~

(2) Reimbursement sought through use of the Soil Disposal/Treatment Claim [Request] Form shall be limited to the cost of:

(a) Transportation and disposal of contaminated soil at a contained landfill or treatment facility, permitted by the cabinet's Solid Waste Branch; and

(b) Material, including transportation, for backfill material.

(3) Reimbursement sought through use of the Capital Equipment Claim Form shall be limited to the purchase price, less determined salvage value, as approved under Section 8(1)(m) of this administrative regulation.

(4) The office may require additional information and documenta-

tion to determine the eligibility, necessity and reasonableness of a cost or costs contained in a request for payment.

(5)(a) A claim received by the office shall be reviewed in accordance with the following, unless an extension of time is agreed to by the applicant and the office:

1. A Claim Request Form shall be reviewed within ninety (90) days of receipt;

2. A Soil Disposal/Treatment Claim Form [Request] shall be reviewed within thirty (30) days of receipt, if the cost has been obligated and preapproved, if necessary, prior to submission;

3. A Capital Equipment Claim Form [Request] shall be reviewed within thirty (30) days of receipt, if costs have been obligated and preapproved, if necessary, prior to submission;

4. A Soil Disposal/Treatment Claim Form [Request] or Capital Equipment Claim Form [Request] submitted prior to securing an obligation or preapproval shall be reviewed within ninety (90) days of the receipt of an obligation and, if necessary, a preapproval.

(b) If the claim is determined to be deficient, the office shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the office within thirty (30) ~~[fifteen (15)]~~ days of the receipt of notice ~~[of receipt]~~ by the applicant. The office shall grant the applicant a thirty (30) day extension if the written request is received within thirty (30) ~~[fifteen (15)]~~ days of receipt of the notice of deficiency. ~~[-]~~

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the office staff, that portion of the claim shall be denied.

(6) The office shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(7) The claim may be submitted with the Application for Assistance but shall not be considered "received for review" until the application has been approved by the secretary or the secretary's designee. If a claim [request] exceeds the amount currently obligated for the facility, the claim shall not be considered "received for review" until a sufficient additional obligation has been approved by the secretary.

(8) An owner or operator of a facility with an approved Application for Assistance shall submit to the office, a copy of [all] reports required by administrative regulation or requested, in writing, by the cabinet, detailing the status of remedial action at the facility, including:

(a) Site check reports;

(b) ~~[-]~~ Site investigation reports;

(c) ~~[-]~~ Corrective action plans;

(d) ~~[-]~~ Quarterly monitoring reports;

(e) ~~[-]~~ Closure assessment reports;

(f) ~~[-]~~ Site classification documents; and

(g) Any other reports to, or correspondence with, the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(9) If the prior approval of a cost required pursuant to 415 KAR 1:110 is not obtained, in writing, prior to the cost being incurred, the office shall not reimburse that cost or a portion of that cost.

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including ~~[permanent—closure; change-in-service;]~~ release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall:

(a) Be obtained prior to commencing the activity, except emergency response measures as directed by the cabinet; and

(b) Set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including the cost of:

1. Personnel;

2. Sampling;

3. Excavation;

4. Treatment or ~~[of]~~ disposal of contamination; and

5. Other expenses necessary to comply with 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance. If a contract is changed or revised, a copy of that con-

tract shall be submitted to the office.

~~[(3) An owner or operator who has submitted an application for assistance received prior to the effective date of this administrative regulation shall submit a copy of a contract setting forth the scope of the services to be performed and detailing the unit costs, in order to be eligible for continued reimbursement or payment from the fund. If a contract is changed or revised, a copy of that contract shall be submitted to the office.]~~

Section 4. Signatures. (1) A claim form or an Application for Assistance Form shall be signed by an eligible owner or operator as follows:

- (a) For a corporation, by:
  1. A principal executive officer of at least the level of vice-president;
  2. The duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility; or
  3. A person designated by the board of directors by means of a corporate resolution;

- (b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or
- (c) For a municipality, state or federal agency, by:

1. A principal;
2. Executive officer; or
3. Ranking elected official.

(2) A claim form [Request] or Application for Assistance Form shall also be signed by:

- (a) The contractor certified pursuant to 415 KAR 1:114 who is responsible for the overseeing of the corrective action; and
- (b) An authorized representative of the contracting company certified pursuant to 415 KAR 1:116.

(3) All signatories shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

(4) The owner or operator signing the certification shall submit documentary evidence to substantiate the legality of the authorized representative's power of agency.

Section 5. Criteria For Approval of a Claim. (1) A claim with an approved Application for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed in the time period specified at Section 2(5)(a) of this administrative regulation.

(2) The claim shall be reviewed to determine if:

- (a) The corrective action complies with 401 KAR Chapter 42;
- (b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;
- (c) The claim form is properly completed and accurate, and all necessary information has been supplied; and
- (d) The applicant has complied with Section 11 of this administrative regulation.

(3) Claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) A claim shall be reviewed by the office to determine eligibility for payment and compliance with the administrative regulations of the office.

(2) A claim [request for payment] covering cost incurred by an owner or operator under an approved Application for Assistance may be submitted to the office thirty (30) days following initiation of corrective action required by law. A subsequent claim [request for payment]

may be made at thirty (30) day intervals thereafter until completion of the authorized activities. A claim [request for payment], except a claim [request] for final payment, shall equal or exceed \$1,000. A claim shall not be submitted for reimbursement until the value of the claim meets or exceeds the applicant's entry level. Any claim [A request] not meeting the requirements of this subsection will be returned unprocessed to the applicant.

(3) A claim [reimbursement request] shall identify the beginning and ending dates for the time interval submitted in the claim. Costs incurred during the specified interval shall be submitted with the claim, except the cost submitted for reimbursement under Section 2(2) or (3) of this administrative regulation.

(4) A claim [for reimbursement] shall be submitted:

(a) On or before October 13, 2001 [Within two (2) years of the effective date of this administrative regulation]; or

(b) Within two (2) years after issuance of a "no further action" letter by the cabinet.

(5) A payment shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee.

Section 7. Payment Procedures. (1)(a) Payment shall be made by a check written to the eligible owner or operator, or to a designated third-party. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the office.

(b) A claim [request] for an interim partial payment shall be accompanied by documentation required by Section 2(8) of this administrative regulation.

(c) A claim [request] for final payment, or for one (1) time payment in full, shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible and Ineligible Costs. The office's reimbursement for costs of corrective action shall be made in accordance with 415 KAR 1:110 and limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of motor fuel release into the environment from a petroleum storage tank. The office may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for office purposes, contamination exceeding the levels for which the cabinet will allow closure shall be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(c) Preparation of corrective action plans;

(d) Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(e) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system if a release has occurred at the facility, or at the written direction of the cabinet;

(f) Restoration or replacement of a private or public drinking water supply;

(g) Removal, treatment, and disposal of contaminated liquids, other than those liquids and sludges contained in the tank, and soils resulting from corrective action;

(h) The cost of material purchased to perform the site check, site investigation or corrective action, including bailers, sample containers, and similar equipment;

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(i) The cost of implementation of corrective action technology such as soil venting or bioremediation, or groundwater treatment system, if accepted by the cabinet for the facility and prior approval is received from the office pursuant to 415 KAR 1:110;

(j) The cost of replacing blacktop or concrete if removal was necessary to perform the corrective action;

(k) An attorney fee integral to the performance of off-site corrective action, such as preparation of an off-site access agreement;

(l) Other costs requested by the applicant and approved by the office, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system; and

(m) A purchase of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director of the office, in accordance with Section 12 of this administrative regulation.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Consultation on office administrative regulations;

4. Preparation or submittal of office documentation; and

5. Other legal services determined by the office not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime, or for staff time in planning or implementing a site check, site investigation or corrective action plan, except as allowed under 415 KAR 1:116;

(i) An aesthetic improvement to the facility;

(j) Interest on an overdue account or loan;

(k) A cost covered by insurance payable to the owner or operator;

(l) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(m) Work performed that is not in compliance with safety codes;

(n) A cost associated with a release from an aboveground tank or aboveground piping;

(o) Contractor markup expense for a normally expected overhead item or in-stock material;

(p) Contractor markup expense for personnel cost;

(q) A laboratory "rush" fee, unless directed by the cabinet;

(r) A cost or cost recovery for governmental emergency services;

(s) Preparation and implementation of a corrective action plan, if a written notice of closure is issued by the cabinet;

(t) Payment from the fund shall be made for the cost of corrective action required by the cabinet's administrative regulations, or at written direction of the cabinet and shall not be made for costs to upgrade the facility. Payment from the fund shall not be made for work or a portion of work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action;

(u) Cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(v) Preparation of fund documentation or client invoices that will be submitted to the office for reimbursement;

(w) Except as provided in 415 KAR 1:130, cost related to the removal, or actions incidental to the removal of a tank system, including a cost listed in 415 KAR 1:130(5);

(x) Cost of resampling and laboratory tests performed under Section 11(4)(b) of this administrative regulation or cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS 224.60-130(2)(a);

(y) Other costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs are required to comply with corrective action standards more stringent than

required by the cabinet; and

(z) Other service or cost determined by the office to be an unreasonable or unnecessary cost of corrective action.

Section 9. Delegation to Executive Director. The secretary may delegate responsibility for the approval of a claim, an Application for Assistance, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the office shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the office for the performance of corrective action from the person responsible or liable for the release.

Section 11. Field Audits. (1) The office shall be authorized to enter and inspect a facility seeking reimbursement for the cost of corrective action in order to determine the reasonableness and necessity of the cost of corrective action.

(2) Refusal to allow an office employee entry and inspection of a facility shall make the facility ineligible for fund participation. Money previously paid to the owner or operator of the facility shall be repaid to, or recovered by, the fund.

(3)(a) After April 1, 1999, office personnel shall be [at] on site during all tank removal activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) An owner or operator shall contact the office, by certified mail, to schedule a date to have a field auditor on site during tank system removal. The certified mail notice shall be received at least fourteen (14) days prior to commencement of the removal;

(c) If the field auditor cannot be on site on the day scheduled by the notice sent as required in paragraph (b) of this subsection, he may, by written notice, require the owner or operator to reschedule the removal to a proposed date. This notice must be mailed by the office no later than ten (10) days prior to the date scheduled by the owner;

(d) If the field auditor fails to issue notice to reschedule the tank removal, or is not present on the day set by the notice, the removal may proceed without penalty; and

(e) This provision shall not apply to an emergency removal ordered by the cabinet.

(4)(a) An owner or operator shall:

1. Provide an office inspector full access to an area or well for the collection of samples;

2. Split samples obtained by the facility with the office, if the inspector requires splitting;

3. Resample an area or well for which the result of analytical testing obtained by the office differs significantly from the result obtained by the facility; and

4. Have the burden of proving the validity of his result, if a discrepancy remains after resampling.

(b) The office shall not reimburse the cost of resampling.

(c) Failure to allow sample collection, or to split samples, shall render the facility ineligible for fund participation.

Section 12. Preapproval for Capital Equipment Rental or Purchase. (1) An owner or operator who has been directed by the cabinet to initiate remedial action that requires the purchase of equipment costing in excess of \$1,000, shall obtain prior approval of the purchase by submitting a Capital Equipment Preapproval Purchase/ [or] Rental [Request] form.

(2) The office shall approve either the purchase or rental of remedial equipment and shall establish the amount to be reimbursed.

(3)(a) The request to purchase the equipment shall contain:

1. Three (3) bids obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company is included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment to be purchased and an anticipated salvage value provided by the supplier or manufacturer;

2. If the bids required by subparagraph 1 of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturers' or suppliers' decline to bid. At least two (2) letters of declination shall be provided for each bid not submitted;

3. A cost benefit analysis comparing purchase against rental of the equipment;



4. A copy of the warranty supplied by the equipment supplier or manufacturer; and

5. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment.

(b)1. The purchase of new equipment shall be considered by the fund at 100 percent of the invoice price for the system with the least expensive life cycle cost.

2. Reimbursement shall be limited to the original purchase price less the anticipated salvage value, including applicable sales tax. The office shall not reimburse for markup.

3. If the owner or operator elects to purchase equipment with a greater life cycle cost, he shall be responsible for the amount above the most economical bid price.

4. The owner or operator shall be responsible for unscheduled maintenance costs covered by the new equipment warranty.

(c)1. An owner or operator who chooses to begin remediation prior to acceptance of the corrective action plan shall submit three (3) bids to the office prior to the purchase of the equipment.

2. The cost of the equipment shall not be reimbursable until the cabinet accepts the corrective action plan.

3. A bid shall remain on file at the office until the corrective action plan is accepted.

4. When the plan is accepted, the owner or operator may request reimbursement for the purchase by submission of a completed Capital Equipment Claim [Purchase or Rental] Form.

(4)(a) A request to purchase used or reconditioned equipment shall contain:

1. Three (3) bids for used equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company is included in the bid process, four (4) bids shall be submitted. Each bid shall contain a description of the equipment and an anticipated salvage value provided by the supplier or manufacturer;

2. If the bids required by subparagraph 1 [subsection (f)] of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturer or supplier's decline to bid. At least two (2) letters of declination shall be provided for each bid not submitted;

3. The name, address and telephone number of the previous owner of the equipment proposed for installation;

4. A description of the equipment, including specifications necessary to compare the proposed equipment with a bid for new equipment;

5. The remaining economic life of the used equipment;

6. A projected salvage value for the used or reconditioned equipment after the proposed usage; and

7. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment.

(b) Reimbursement for the purchase of used or reconditioned equipment shall be the cost of purchase plus fifteen (15) percent markup less the anticipated salvage value, and shall be limited to:

1. For used equipment, sixty-five (65) percent of the cost of the most economical new system bid submitted to the office; and

2. For reconditioned equipment, eighty (80) percent of the cost of the most economical new system bid submitted to the office.

(d) Reimbursement shall not be made for unscheduled maintenance or component replacement occurring during the greater of:

1. The period of limited warranty specified by the supplier or manufacturer; or

2. 180 days.

(5) An owner or operator may request rental of remediation equipment if the cost of rental does not exceed the cost of purchase.

(a) The fund shall:

1. Reimburse for actual active usage of rented remediation equipment; and

2. Not reimburse for idle equipment maintained at the facility for the convenience of the contractual parties.

(b) A request to rent equipment shall contain:

1. Three (3) bids for rental equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company is included in the bid process, four (4) bids shall be submitted. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

2. If the bids required by subparagraph 1 of this paragraph cannot be obtained, the owner shall provide written documentation of the

manufacturer or supplier's decline to bid. At least two (2) letters of declination must be provided for each bid not submitted; and

3. The cost of shipping, installation, training, and start up, stated separately from the cost of equipment.

Section 13. Affidavits and Waivers. A [Any] Claim Request Form, Soil/Disposal/Treatment Claim Form, or Capital Equipment Claim Form received by the office forty-five (45) days [on] or more after the effective date of this administrative regulation shall [must] be accompanied by:

(1) Either Payment Verification Affidavit Form A or Payment Verification Affidavit Form B; and

(2) If required by KRS 224.60-140(18), a Payment Waiver Form executed by each affected vendor and subcontractor.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Assistance Form (October 2000)" [(October, 1998)], PSTeAF #2;

(b) "Claim Request Form (October 2000)" [Claim Request (October, 1998)], PSTeAF #3;

(c) "Invoice Listing Form (October 2000)" [(July 1996)], PSTeAF #4;

(d) "Soil Disposal/Treatment Claim Form (October 2000)" [Request, (October 1998)], PSTeAF #9; [and]

(e) "Capital Equipment Claim Form (October 2000)" [Purchase and Rental Request, (October 1998)], PSTeAF #10;

(f) Capital Equipment Preapproval Purchase/Rental Form (October 2000)", PSTeAF #11;

(g) "Payment Verification Affidavit Form A (October 2000)", PSTeAF #14;

(h) "Payment Verification Affidavit Form B (October 2000)", PSTeAF #15; and

(i) "Payment Waiver Form (October 2000)", PSTeAF #16.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RONALD B. MCCLOUD, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: December 6, 2000

FILED WITH LRC: December 6, 2000 at 2 p.m.

**JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(As Amended at ARRS, February 13, 2001)**

**501 KAR 3:130. Prisoner [inmate] programs; services.**

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS [13A:350:] 441.055, 532.100(4)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes [sets forth] procedures for prisoner [inmate] programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that prisoner [inmate] programs and services shall be [are] available and include [but are not limited to] social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced prisoners [inmates] who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be [inmates are not] required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy



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and procedure which **encourages** [encourage] the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of **the** [such] programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) **State prisoners [inmates]** shall be provided the opportunity to attend adult basic education programs **or to pursue a general educational development (GED) diploma [and pursue a GED]**.

Section 3. Library Services. **If [Where]** resources are available in the community, library services may be made available to all **prisoners [inmates]**.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights of **prisoners [inmates]** to voluntarily practice their own religious activities, subject **[only]** to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all **prisoners [inmates]** with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week **if [when]** weather permits. **Prisoners [inmates]** who pose a threat to the safety and security of the jail **shall [may]** be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit **prisoners [inmates]** to participate in ~~[-but not be limited to; such activities as]~~ board games, arts and crafts, radio and television **or other activities designed** to relieve idleness and boredom.

Section 6. Programs for State **Prisoners [Inmates]**. (1) **On-the-job training [OJT] work programs. State prisoners [inmates] shall be provided the opportunity to participate in on-the-job training [OJT] work programs in accordance with KRS 441.125. State prisoners [inmates] who have an approved custody level shall [may] be allowed to work on community service projects outside the jail if [when] authorized by the jailer.**

(2) Substance abuse programs. **State prisoners [inmates] shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) [AA or NA]. State prisoners [inmates] who have been determined to have substance abuse problems shall be referred to outpatient treatment[-which is] available in the community. State prisoners [inmates], who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if [when] space is available.**

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

### JUSTICE CABINET Kentucky Department of Corrections (As Amended at ARRS, February 13, 2001)

#### 501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 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 Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: "Department of Corrections Secured Policies and Procedures, **February 13, 2001** [~~December~~ ~~September~~ ~~13, 2000~~]."

BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-04-01	Construction Crew Entry, Exit and Regulations
BCC 09-04-02	Complex Entry and Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing
BCC 09-09-01	Population Counts and Count Documentation
BCC 09-15-01	Search Policy and Disposition of Contraband
BCC 09-16-01	Security Activity Logs
BCC 09-17-01	Institutional Supervisor Inspections
BCC 09-20-01	Inmate Death
BCC 09-21-01	Tool Control
BCC 09-22-01	Emergency Communication System
CPP 8.3	Emergency Planning
CPP 8.4	Emergency Preparedness
CPP 8.5	Emergency Squads
CPP 9.1	Use of Force
CPP 9.3	Security Threat Groups
CPP 9.7	Storage, Issue and Use of Weapons Including Chemical Agents
CPP 9.9	Transportation of Inmates
CPP 9.10	Security Inspections
CPP 9.11	Tool Control
FCDC 09-01-02	Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
GRCC 08-03-01	Escape Plan (Amended 12/13/00)
GRCC 08-05-01	Emergency Squad: Selection, Training and Evaluation (Amended 2/13/01 [ <del>12/13/00</del> ])
[GRCC 08-06-01]	Response Units (Deleted 12/13/00)
GRCC 08-07-01	Natural Disaster or Earthquake (Amended 2/13/01 [ <del>12/13/00</del> ])
GRCC 09-03-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
GRCC 09-04-01	Inmate Death
GRCC 09-05-01	Construction Crew Entry and Exit Guidelines
GRCC 09-06-01	Entry and Exit Procedures
GRCC 09-07-01	Institutional Inspections
GRCC 09-08-01	Issuance of Weapons, Ammunition and Chemical Agents
GRCC 09-10-01	Emergency Release from Locked Areas
GRCC 09-11-01	Tool and Equipment Control
GRCC 09-12-01	Key Control
KSP 09-08-01	Searches and Preservation of Evidence [(Amended 9/13/00)]
KSR 09-00-04	Horizontal Gates/Box 1 Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-27	Construction Crew Entry/Exit
KSR 10-01-011	Special Management - Behavior Problem Control
LLCC 09-01-02	Priority Posts Assignments for Daily Operation [(Added 9/13/00)]
LLCC 09-01-03	Emergency Security Posts Coverage [(Added 9/13/00)]
LLCC 09-06-01	Central Control Center Operating Procedure [(Added 9/13/00)]
LLCC 09-06-02	Central Control Count Documentation [(Added 9/13/00)]
LLCC 09-07-01	Count Procedure [(Added 9/13/00)]
LLCC 09-07-02	Count Documentation [(Added 9/13/00)]
LLCC 09-08-01	Regulation of Inmate Movement [(Added 9/13/00)]
LLCC 09-08-02	Unit Security and Emergency Procedure [(Added 9/13/00)]

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	9/13/00))
LLCC 09-09-01	Transportation of Inmates [(Added 9/13/00)]
LLCC 09-09-02	Entry and Exit Control [(Added 9/13/00)]
LLCC 09-11-01	Standards for Maintaining Perimeter Security [(Added 9/13/00)]
LLCC 09-11-02	Perimeter Towers and Box #1 [(Added 9/13/00)]
LLCC 09-11-03	Perimeter Patrol Officer [(Added 9/13/00)]
LLCC 09-11-04	Outside Detail [(Added 9/13/00)]
LLCC 09-12-02	Monitoring Staff and Visitors With the Computer System [(Added 9/13/00)]
LLCC 09-13-01	Outside Hospitals and University of Louisville Hospital Security [(Added 9/13/00)]
LLCC 09-14-01	Security Procedures for Print Shop [(Added 9/13/00)]
LLCC 09-15-01	Emergency Redlight Response [(Added 9/13/00)]
LLCC 09-15-02	Response Units [(Added 9/13/00)]
LLCC 09-16-02	Escape Plan [(Added 9/13/00)]
LLCC 09-17-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power [(Added 9/13/00)]
LLCC 09-18-02	Radio transmission Signal 10 Code Listing [(Added 9/13/00)]
LLCC 09-18-04	Procedure for Monitoring of Inmate Telephone Calls [(Added 9/13/00)]
LLCC 09-20-01	Weapons and Related Security Device Control [(Added 9/13/00)]
LLCC 09-20-02	Key Control [(Added 9/13/00)]
LLCC 09-20-07	Use of Protectojet Model #5 [(Added 9/13/00)]
LLCC 09-21-02	Use of Immobilization Control Unit or Electronic (ICE) Shield, Electronic Belt and Taser Gun [(Added 9/13/00)]
LLCC 09-21-03	Forced Cell Entry in a Housing Unit or Special Management Unit (SMU) [(Added 9/13/00)]
LLCC 09-22-01	Use of Restraints [(Added 9/13/00)]
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials
RCC 09-06-01	Search Policy/Disposition of Contraband

(2) There shall not be a [will-be-no] public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025(6) which states that these [such] policies shall not be accessible to the public or inmates.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

**JUSTICE CABINET**  
**Department of Corrections**  
**Division of Local Facilities**  
**(As Amended at ARRS, February 13, 2001)**

## 501 KAR 7:130. Prisoner [Inmate] programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100  
 STATUTORY AUTHORITY: KRS [13A:350;] 441.055, 532.100(4)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners [detention-facilities]. This administrative regulation establishes [sets-forth] procedures for prisoner [resident] programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that prisoner [resident] programs and services shall be [are] available and include[~~-but are not limited to-~~] social services, religious services, recreation and leisure time activities and library services.

(2) Prisoners [Residents] who perform work as authorized by KRS 441.125 [441-068] may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedures shall establish guidelines for

prisoners [residents] as to acceptable means of transportation to and from work, school and programs.

(4) There shall be written procedures for the verification and monitoring of the prisoner's [resident's] employment status. A written schedule shall be maintained for program release to include [but not limited to:] time of departure, destination, telephone number and address of program location and time of return. Periodic monitoring of a prisoner's [resident's] adherence to the approved schedule shall occur.

(5) Written procedures shall specify the monetary amount of reimbursement for room and board at the facility by the prisoner [resident] and the process by which these fees shall [will] be collected and used. Accurate records of receipts shall be maintained.

Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners [residents] to voluntarily practice their own religious activities, subject [only] to those limitations necessary to maintain the order and security of the center.

Section 3. Recreation Programs. Written policy and procedure shall provide all prisoners [residents] with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include [but not limited to, such activities as] board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 4. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the facility.

Section 5. Prisoner [Inmate] Programs and Services. (1) On-the-job training [OJT] work programs. State prisoners [inmates] shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level shall [may] be allowed to work on community service projects outside the jail if [when] authorized by the jailer.

(2) Education programs. State prisoners [inmates] shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma [and pursue a GED].

(3) Substance abuse programs. State prisoners [inmates] shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) [AA or NA]. State prisoners [inmates] who have been determined to have substance abuse problems shall be referred to outpatient treatment[~~-which is~~] available in the community. State prisoners [inmates], who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if [when] space is available.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

**JUSTICE CABINET**  
**Department of Corrections**  
**Division of Local Facilities**  
**(As Amended at ARRS, February 13, 2001)**

## 501 KAR 10:130. Prisoner [Inmate] programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100  
 STATUTORY AUTHORITY: KRS [13A:350;] 441.055, 532.100(4)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes [sets-forth] procedures for prisoner [inmate] programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall

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provide that prisoner [inmate] programs and services shall be [are] available and include [but are not limited to] social services, religious services, recreation and leisure time activities and library services.

(2) Written policy and procedure shall provide that unsentenced prisoners shall not be [inmates are not] required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure which encourages [encourage] the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of the [such] programs.

(2) Education programs may be made available in accordance with KRS 439.179.

Section 3. Library Services. If [Where] resources are available in the community, library services may be made available to all prisoners [inmates].

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights to prisoners [inmates] to voluntarily practice their own religious activities, subject [only] to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all prisoners [inmates] with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if [when] weather permits. Prisoners [inmates] who pose a threat to the safety and security of the jail shall [may] be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners [inmates] to participate in [-but not be limited to; such activities as] board games, arts and crafts, radio and television or other activities designed to relieve idleness and boredom.

Section 6. Prisoner [Inmate] Programs and Services. (1) On-the-job training [OJT] work programs. State prisoners [inmates] shall be provided the opportunity to participate in on-the-job training [OJT] work programs in accordance with KRS 441.125. State prisoners [inmates] who have an approved custody level shall [may] be allowed to work on community service projects outside the jail if [when] authorized by the jailer.

(2) Education programs. State prisoners [inmates] shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma [and pursue a GED].

(3) Substance abuse programs. State prisoners [inmates] shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) [AA or NA]. State prisoners [inmates] who have been determined to have substance abuse problems shall be referred to outpatient treatment [-which is] available in the community. State prisoners [inmates], who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), if [when] space is available.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, February 13, 2001)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an 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.

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;

(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;

(13) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 USC Section 1681 (Title IX);

(14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and

(15) provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall 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' guidebook of the KHSAA Handbook, October, 2000 [1999] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, October, 2000 [1999]", Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, [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.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at noon

# EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended at ARRS, February 13, 2001)

## 702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. [.] KRS 157.360 bases SEEK funding upon average daily attendance. [.] KRS 158.030, 158.100, and 159.030 require the age for compulsory school attendance. [.] KRS 158.060 defines the school day and month and make-up of school days missed. [.] KRS 158.070 defines the school term. [.] KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. [.] KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

Section 2. (1) The local board of education shall file the adopted

school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

Section 5. [(3)] A local board of education request for disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. [5:] (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 7. [6:] (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning and [.] one (1) time in the afternoon and maintaining a student entry and exit log at each school.

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(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure, parent or legal guardian signature and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; ~~or~~

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035; ~~or~~

(c) ~~The pupil is participating in an off-site virtual high school class or block. A student in attendance in the class immediately preceding or following (if [where] applicable) the designated virtual class or block[,] shall be counted in attendance for the virtual high school class. [A student absent from the class immediately preceding or following (where applicable) the designated virtual class or block, shall be counted absent for the virtual high school class or block.]~~

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 8. [7:] (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of the regularly scheduled school day for his grade level.

(5) The percentages described in this section shall apply to the regularly scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 9. [8:] A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 10. [9:] A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 11. [10:] If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 12. [11:] (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the

primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil who is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 13. [12:] The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 14. [13:] (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 15. [14:] The superintendent's annual attendance report shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320. Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 16. [15:] (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 17. [16:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W13, W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03;

(11) R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

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(12) R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;

(13) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;

(14) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(15) W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;

(16) W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R05, or R07;

(17) W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R05, or R07;

(18) W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has withdrawn. The reentry code to use with W06 shall be R06;

(19) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local home-bound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(20) W08 - A pupil withdrawn due to death;

(21) W09 - A pupil graduated prior to the end of the school term or year;

(22) W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be R06 if the student returns to the expelling local school district in the current school year after the expulsion period has been completed. The reentry code to use with W10 shall be R10 if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;

(23) W11 - A pupil who has been expelled for behavioral reasons withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be R06 if the student returns in the current school year after the expulsion period has been completed. The reentry code to use with W11 is R11 if the student returns in the current school year prior to completion of the expulsion period;

(24) W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(25) W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R06;

(26) W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(27) W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and

(28) W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

Section 18. [17:] (1) The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and

(b) N - Suspension from school for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 19. [18:] The following expulsion codes shall be used to indicate the expulsion status of pupils:

(1) XP1 - A student expelled from school during the current school year for behavioral reasons, being provided educational services by the expelling local school district;

(2) XP2 - A student expelled from another local school district during the current school year for behavioral reasons, being provided educational services by a regional alternative facility not run by the expelling local school district;

(3) XP3 - A student expelled from school during the current school year for behavioral reasons, not being provided educational services.

(4) XE1 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by the local school district;

(5) XE2 - A student expelled from another local school district during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by a regional alternative facility not run by the expelling local school district; and

(6) XE3 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is not being provided educational services.

Section 20. [19:] The following ethnic codes shall be used to indicate the ethnic origin of pupils until June 30, 2002 [2000]:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - Other.

Section 21. [20:] (1) Beginning July 1, 2002 [2000], the following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) H - Hispanic or Latino - A person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race; and

(2) N - Not Hispanic or Latino.

Section 22. [21:] (1) Beginning July 1, 2002 [2000], the following race codes shall be used to indicate the racial categories of pupils:

(a) W - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(b) B - Black or African American - A person having origins in any of the black racial groups of Africa;

(c) H - Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

(d) A - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam; and

(e) I - American Indian or Alaska Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains tribal affiliation or community attachment.

(2) More than one (1) racial category may be selected. Local school districts shall [must] be able to identify the number of students that have elected more than one (1) racial category as described in this section.

Section 23. [22:] (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in



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accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report prior to June 30 of each year.

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file. **A local school district shall use the Student Record Release Form, or obtain approval from the Department of Education to use an alternative form.** [The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.]

Section 24. [23:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Growth Factor Report" file layout, dated July 15, 1999 [June 1, 1998];

(b) The "Superintendent's Annual Attendance Report" file layout, dated December 1, 1999 [July 1, 1996]; [and]

(c) The "Student Dropout Questionnaire" dated August 1, 2000; and

(d) **The Student Record Release Form, dated February 1, 2001** [June 1, 1998].

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law**, at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at noon

### EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, February 13, 2001)

#### 704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1)(a), (b), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 **require** [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 Education Professional Standards Board. **KRS 161.028(1)(a) requires** [directs] **the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate.** KRS 161.028(1)(b) 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. **KRS 161.028(1)(f) requires** [(c) grants] **the Education Professional Standards Board [the authority and responsibility] to issue and renew any certificate.** This administrative regulation establishes the Kentucky certification to be issued for [classroom] teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 704 KAR 20:696 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 **and established in 704 KAR 20:305.**

(3) "Base certificate" means a stand-alone license to teach which **encompasses authorization to teach introductory and interdisciplinary courses in related fields.**

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 **and established in 704 KAR 20:690.**

(5) "Certificate endorsement" means an addition to a base or re-

**stricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program.**

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) [(4)] "Experienced teacher standards" means the standards established in 704 KAR 20:730 that identify what an effective experienced teacher shall know and do.

(8) "New teacher standards" mean the standards established in 704 KAR 20:730 that identify what a new teacher shall know and be able to do.

(9) [(5)] "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) [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.

(10) [(6)] "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject [1] area which can be taught under this limited certificate.

(12) [(7)] "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. At least a bachelor's degree with a cumulative grade point average (GPA) of 2.50 on a 4.0 scale; or

2. As required by Section 4(2)(g) 6 [5] and (4)(e) [(h)5] of this administrative regulation, a master's degree with a cumulative grade point average (GPA) of 2.50 on a 4.0 scale;

(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 20:730; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(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 **and a partial portfolio for the continuing education option established** [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 **and a full portfolio for the continuing education option established** [defined] in 704 KAR 20:022[-Section 4(1)].

(4) Each subsequent five (5) year renewal shall require **completion of the renewal requirements established in 704 KAR 20:060.** [:

(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. (1) Preparation for a teaching certificate shall be based on [ensure that a teacher]:

(a) The new teacher standards established in 704 KAR 20:730;

(b) The accreditation and program approval standards established in 704 KAR 20:696, including the content standards of the relevant national specialty program associations; and [Has the knowledge and skills for the instruction of all children including an intellectually gifted and talented child or a child with a disability;

(b) Is proficient in the:

1. Use of technology; and

2. Instruction for multiage and multiability grouping; and]

(c) [Has the knowledge and skills to implement] The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base [teaching] certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;

(b) 1. Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;

2. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.

3. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c) 1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies.

2. Middle school option 2: grades five (5) through nine (9) with two middle school teaching fields to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

3. [2.] A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection [subsections (2) or] (3) of this section, including [but not limited to] certification for teaching exceptional children, [teaching exceptional children as provided in paragraph (g) of this subsection] shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

1. English;

2. Mathematics;

3. Social studies;

4. Biology;

5. Chemistry;

6. Physics; or

7. Earth science [Biological science; or

5. Physical science];

(e) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

1. Agriculture;

2. Business and marketing education;

3. Family and consumer science; [or]

4. Industrial education; or

5. Technology education;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;

2. A foreign language;

3. Health;

4. Physical education;

5. Integrated music; [or]

6. Vocal music;

7. Instrumental music; or

8. School media librarian;

(g) 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:

1. Learning and behavior disorders;

2. Moderate and severe disabilities [704 KAR 20:251];

3. [Teacher of deaf and hard of] Hearing impaired;

4. Hearing impaired with sign proficiency;

5. Visually impaired; [or]

6. [5.] Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, **which shall require [and requires] a master's degree in communication or speech language pathology, in accordance with 704 KAR 20:500, Section 2 [(2)]; or**

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, **which shall require [and requires only] a baccalaureate degree in communication or speech language pathology, in accordance with 704 KAR 20:500, Section 3 [(3)].**

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades eight (8) through twelve (12);

(b) Sociology, grades eight (8) through twelve (12);

(c) Journalism, grades eight (8) through twelve (12);

(d) Speech/media communications, grades eight (8) through twelve (12);

(e) Theater, primary through grade twelve (12);

(f) Dance, primary through grade twelve (12);

(g) Computer information systems, primary through grade twelve (12); or

(h) English as a second language, primary through grade twelve (12).

(4) An endorsement [;

(h) Endorsements] to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations [paragraphs (a) through (g) of this subsection, valid for all grade levels, for the following]:

(a) [4.] Computer science, grades eight (8) through twelve (12);

(b) [2.] English as second language, primary through grade twelve (12);

(c) [3.] Gifted education, primary through grade twelve (12);

(d) [4.] Driver education, grades eight (8) through twelve (12); [or]

(e) [5.] Reading and writing **which shall require [and requires] a master's degree in reading, primary through grade twelve (12);**

(f) Instructional computer technology, primary through grade twelve (12);

(g) Other instructional services - school safety, primary through grade twelve (12); [or]

(h) Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall [may] be obtained by either:

1. Completion of the requirements of Section 5(2) of this administrative regulation; or

2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSA); or [;]

(i) Learning and behavior disorders, grades eight (8) through (12);

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation and [7] certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension shall be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency

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evaluation.

(2) A certificate endorsement shall be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

- (a) A valid base or restricted base certificate, including a statement of eligibility;
- (b) Successful completion of the applicable assessments; and
- (c) Recommendation from an approved preparation program.

Section 6. Candidates pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. ~~[(+)]~~ For purposes of admission and completion of advanced and administrator preparation programs, the following certificates shall not be considered classroom teaching certificates:

- (1) ~~[(a)]~~ School media librarian;
- (2) ~~[(b)]~~ Exceptional children - communication disorders;
- (3) ~~[(c)]~~ Exceptional children - communication disorders/SLPA only;
- (4) ~~[(d)]~~ School nurse certification issued under 704 KAR 20:132;
- (5) ~~[(e)]~~ School psychologist certification issued under 704 KAR 20:128;
- (6) ~~[(f)]~~ School social worker certification issued under 704 KAR 20:194 or 704 KAR 20:195; and
- (7) ~~[(g)]~~ Junior Reserve Officer Training Corps certification issued under 704 KAR 20:260.

Section 8. ~~[Section 5. Additional Certification. A candidate who holds a certificate valid for classroom teaching shall qualify for additional certification upon:~~

- ~~(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. 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, 20:080, 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) Apply for the certification by January 1, 2004.

(5)(a) A candidate who is admitted to the preparation program for the interdisciplinary physical science secondary certificate prior to September 1, 2001 shall:

- 1. Complete the program by September 1, 2003; and
- 2. Apply for certification by January 1, 2004.

(b) A candidate who fails to complete the preparation program for the interdisciplinary physical science secondary certificate by September 1, 2003 or who ~~[and]~~ does not apply for certification by January 1, 2004 shall be required to qualify for one (1) or more of the secondary science certificates in physics, chemistry, or earth science established in this administrative regulation.

(6) 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.

Section 9. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 704 KAR 20:045.

Section 10. Incorporation by Reference. (1) ~~[The following material is incorporated by reference:]~~ Form TC-1, rev. 9/2000, Education Professional Standards Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: December 15, 2000 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET  
Department for Technical Education  
(As Amended at ARRS, February 13, 2001)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 13B, 151B.035(3)(t), 151B.055, 151B.085, EO 2000-990

STATUTORY AUTHORITY: KRS 151B.035(3)(t), EO 2000-990 [KRS 151B.035]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(t) requires the State Board for Adult and Technical Education to promulgate administrative regulations governing employee appeals. EO 2000-990 abolished the State Board and transferred the board's duties and functions to the Department for Technical Education. EO 2000-990 ~~[(August 3, 2000)]~~ [KRS 151B.035] requires the Commissioner of the Department for [State Board for Adult and] Technical Education to promulgate comprehensive administrative regulations [with the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive administrative regulations] for an appeal system for aggrieved employees [the certified and equivalent staff governing appeals]. This administrative regulation establishes the appeals and hearings requirements for employees.

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions. (1) To file an appeal, an employee shall file a completed Appeal Form, and other documents relating to the appeal, [An appeal or a document relating to an appeal [Appeals] shall be filed] with the Technical Education Personnel Commission [State Board for Adult and Technical Education] through the office of the ombudsman [secretary] of the Department for Technical Education [board].

(2) An appeal or document relating to an appeal [Appeals] shall be filed within thirty (30) calendar days after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence. If [as specified in KRS Chapter 151B, Section 9(8)(c). When] the 30th day of the filing period falls on a day when the Department for Technical Education [office of the secretary of the board] is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) An appeal [Appeals] shall be heard in Frankfort, Kentucky or in

a location mutually acceptable to the hearing officer and the employee. The hearing officer shall make the final determination of the location of the hearing.

(4) If the appeal form indicates that the [appealing] employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the [appealing] employee shall be submitted by that attorney.

(5)(a) Unless otherwise directed by the commission, the ombudsman of the Department for Technical Education [board, the secretary of the board] shall assign a hearing officer or officers to an [each] appeal.

(b) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief.

(c) If the appeal is to be heard by the full commission [board], the chairman of the commission shall serve as the chief hearing officer.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

Section 4. [2:] Continuances. (1) Except as provided by subsection (5) of this section, a party shall [Any party may] request a continuance of a scheduled hearing for good cause by following the procedures established in subsections (2) and (3) of this section.

(2) A [The] request for continuance shall:

(a) Be written;

(b) [be in writing;] State the reason for the request;

(c) [and] Include proposed dates for rescheduling the hearing;

(d) [- The request shall] Be filed with the commission; and

(e) Be [board through the office of the secretary of the board and] mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be written;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the commission; and

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

[ (2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board through the office of the secretary of the board within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties. ]

(4) [(3)] A continuance may be granted in extraordinary circumstances by the hearing officer.

(5) [(4)] A request for a continuance based on a bona fide personal emergency may [shall] be granted [only] upon appropriate justification at the discretion of the hearing officer. [and may be granted without strict compliance with the requirements of this section.]

(6)(a) [(5)] All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the ombudsman of the Department for Technical Education [secretary of the board] shall execute and transmit to all parties an interim order either granting or denying the continuance.

(b) If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 5. [3:] Prehearing Procedures. (1) A motion, request or filing shall:

(a) [All motions, requests or filings shall] Be in writing;

(b) Be [:] filed with the commission [board] through the office of the ombudsman of the Department for Technical Education; [secretary] and

(c) Be served on all other parties.

(2)(a) An [Any] interim order by the hearing officer shall be executed and transmitted by the commission through the ombudsman of the Department for Technical Education [secretary of the board] to all parties.

(b) Unless an interim order provides for review by the commission prior to the conclusion of a hearing, the commission shall review an interim order when it considers the recommended order, record, and

exceptions. [Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.]

(3) If an [appealing] employee retains counsel subsequent to filing an [his] appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the [appealing] employee shall be submitted by that attorney.

(4) An [appealing] employee shall notify all parties and the commission [board] in writing of a [any] change of address or a change in counsel.

(5) A deposition [A list of witnesses who may be called to testify shall be filed by each party at least seven (7) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.]

(6) Subpoena forms shall be available in the office of the secretary of the board and shall be issued by the secretary of the board. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in an extraordinary circumstance [circumstances] and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. An objection to the request [Any objections] shall be filed prior to the scheduled hearing.

(6) [(8)] Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of a party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

[(9) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matters which will facilitate the hearing.]

(7) An agreed settlement [(10) Any agreed settlements] shall be submitted in writing for the full commission's [board's] review and final action.

(8) The ombudsman of the Department for Technical Education [(11) The secretary of the board], general counsel, and commission [board] staff may participate in ex parte communication concerning pending and impending proceedings before the commission [board] relating to:

(a) Procedural questions; or [:]

(b) Scheduling of hearings.

Section 6. [4:] Conduct of Hearing. (1) The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(2) Unless the appeal is heard by the full commission [board], the hearing officer assigned shall hear the appeal. [The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing and shall be authorized to require compliance with his rulings.]

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross-examination. The opposing party shall then present its case; examine witnesses and submit documentation, subject to cross-examination.]

(3) A party [(5) All parties] shall provide three (3) copies of an [any] exhibit that [which] is to be introduced as evidence. Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Commission Review and Action. (1) A response to a written exception to a recommended order shall be filed in accordance with KRS 13B.110(4) [may be filed by a party within five (5) days after the date the written exception is filed with the commission]. A response shall be:

(a) In writing; and

(b) Served on all parties.

(2) ~~[(6) The proceedings and evidence presented shall be recorded by a court reporter.~~

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the secretary of the board to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the secretary of the board within twenty (20) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the secretary of the board within ten (10) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the commission [board] in making a final determination.

(3) At the request of a party or on its own motion, the commission may permit oral arguments before the full commission. A request for oral argument shall be:

(a) In writing;

(b) Filed with the commission within fifteen (15) days of issuance of a recommended order; and

(c) Served on all parties.

(4) The commission shall issue a final order in accordance with KRS 13B.120 [Section 6. Board Review and Action. (1) The board] [may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate].

(5) [(2)] Following consideration by the full commission [board], a final order shall be entered disposing of the appeal. The order shall be prepared, executed, and entered at the direction of the commission by the ombudsman of the Department for Technical Education, [secretary of the board. Copies of the order shall be transmitted to all parties by the secretary of the board.]

Section 8. Incorporation by Reference. (1) Appeal Form (revised 9/2000)[.] is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner

APPROVED BY AGENCY: November 20, 2000

FILED WITH LRC: November 29, 2000 at 4 p.m.

**WORKFORCE DEVELOPMENT CABINET**  
**Department for Technical Education**  
**(As Amended at ARRS, February 13, 2001)**

**780 KAR 3:130. Employee grievances.**

RELATES TO: KRS 151B.035(3)(u), 151B.055, EO 2000-990

STATUTORY AUTHORITY: KRS 151B.035(3)(u), EO 2000-990 [KRS 151B.035]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(u) requires the State Board for Adult and Technical Education to promulgate administrative regulations governing employee grievances and complaints. EO 2000-990 abolished the State Board and transferred the board's duties and functions to

the Department for Technical Education. EO 2000-990 [KRS 151B.035] requires the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the process for a fair and equitable grievance system. **This administrative regulation establishes the requirements governing employee grievances.**

Section 1. Definition. "Grievance" means a [grievance is any] complaint filed by an employee which concerns working conditions over which the Department for [Adult and] Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions. (1) An [Any] employee in the certified and equivalent personnel system who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this **administrative regulation** [procedure].

(2) A [Any] grievance concerning an action which is appealable directly to the Technical Education Personnel Commission [State Board for Adult and Technical Education pursuant to KRS Chapter 151B, Section 16:] may [also] be filed with the Department for [Adult and] Technical Education. The filing of a grievance with the department **shall not:**

(a) [does not] Prohibit the employee from [also] filing an appeal with the Technical Education Personnel Commission [State Board for Adult and Technical Education]; or

(b) [however, it shall not] Extend the thirty (30) calendar day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The appointing authority shall inform all employees in the Department for [of Adult and] Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review [which have been approved by the State Board for Adult and Technical Education pursuant to Section 4(7) of this administrative regulation].

(5) The Commissioner of the Department for [Adult and] Technical Education shall make available to employees, through the appointing authority, the "Grievance Form", which shall [a uniform grievance form to] be used to file [filing] a grievance. The form shall contain a notice [in bold print] that, if the grievance concerns an action appealable directly to the Technical Education Personnel Commission pursuant to KRS 151B.055, [State Board for Adult and Technical Education pursuant to KRS Chapter 151B, Section 16] the employee's right to file an appeal **shall not be** [is not] extended beyond thirty (30) calendar days.

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware[,] through the exercise of the due diligence, of the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) If [When] a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability [handicap] or age [forty (40) or over], the recipient shall immediately notify the Commissioner of the Department for [Adult and] Technical Education and the Department **Equal Employment Opportunity (EEO)** [EEO] Coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1)(a) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor [respective regional executive director if in Kentucky tech centers, state technical schools, regional offices, or correctional centers. If the grievance is from an employee in the central operation, then the employee may request review to the respective division director].

(c) If the area supervisor [regional executive director in the Kentucky Tech System] or the division director [in the Kentucky Tech System] is the first line supervisor, [then] the request for review shall automatically be [is automatically] requested from the Ombudsman for the Department for [Adult and] Technical Education. [If the division director (other than in the Kentucky Tech System) is the first line supervisor, then the request for review is automatically requested from the office head in the Department for Adult and Technical Education.]

(2) The second line supervisor [regional executive director or the division director] shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance. If the second line supervisor [regional executive director or the division director] is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the ombudsman [or the respective office head] in the Department for [Adult and] Technical Education.

(3) If the ombudsman [or respective office head] is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the Commissioner of the Department for [Adult and] Technical Education for a final determination. The commissioner, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Modification of the procedures set forth in this section necessary to accommodate organizational structure within the Department for [Adult and] Technical Education may be made only upon approval of the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education].

(5) Failure of supervisory or management personnel to respond within prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(6) An [Any] intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference. (1) Grievance Form (revised 9/2000)[:] is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner

APPROVED BY AGENCY: November 28, 2000

FILED WITH LRC: November 29, 2000 at 4 p.m.

**WORKFORCE DEVELOPMENT CABINET**  
**Department for the Blind**  
**Business Enterprises Division**  
**(As Amended at ARRS, February 13, 2001)**

**782 KAR 1:010. Federal Vocational Rehabilitation Program.**

RELATES TO: KRS 163.470(11), 34 CFR Part 395, 20 USC 107b, 107e [163.450 to 163.470]

STATUTORY AUTHORITY: KRS 163.470(5), 34 CFR 395.4, 20 USC 107b(5) [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS [163.450 to] 163.470(5) requires the department to establish and implement policies and procedures for administering the program of services for the

blind and visually impaired. 20 USC 107b(5) requires the department to promulgate administrative regulations for the operation of the vending facility program. This administrative regulation establishes the operational requirements for the business enterprises program [by the state licensing agency] for the federal Randolph-Sheppard Vending Facility Program. [designates the Department for the Blind to be responsible for all rehabilitation services for citizens of the Commonwealth of Kentucky who are blind and visually impaired. These administrative regulations adopt federal rules governing the services, personnel, and administration of the Department for the Blind required as a condition for the agency to receive federal funds and to administer federal vocational rehabilitation programs. PL 93-516, as amended, requires the submission to the Commissioner of Rehabilitation Services, Department of Education, an application for designation as state licensing agency to administer the Randolph-Sheppard Vending Facility Program.]

Section 1. Definitions. (1) "Active participation" means an ongoing process between the department and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures which does not supersede the department's final authority to administer the program.

(2) "Agreement" means a written contract entered into between the department and property management authorizing the establishment of a vending facility and setting forth the service obligations.

(3) "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(4) "Commissioner" means the commissioner of the Kentucky Department for the Blind.

(5) "Counselor" means a vocational rehabilitation counselor in the Department for the Blind.

(6) "Department" means the Department for the Blind which is the state licensing agency for the Randolph-Sheppard Vending Facility Program in Kentucky.

(7) "Director" means the Division Director of Kentucky Business Enterprises.

(8) "Eligible individual" means a consumer who has met the criteria to receive vocational rehabilitation services from the department.

(9) "Kentucky Business Enterprises" or "KBE" [(KBE)] means a division of the department.

(10) "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not managing a vending facility.

(11) "Manager" means a vendor in a vending facility who is responsible for the facility's operation.

(12) "Mediation" means an informal option which allows a vendor to seek resolution of a dispute with a department action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(13) "Seniority" means the [an] accumulated period of time during which a vendor has operated KBE vending facilities.

(14) [(13)] "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE Vendor Training Program leading to licensure.

(15) [(14)] "Vending facility" means a food sales operation within the meaning of 34 CFR 395.1(x) operated on state, federal, or private property under the auspices of KBE by a vendor.

(16) [(15)] "Vendor" means a licensee operating a vending facility under terms of an agreement, permit, or contract [the agreement(s), permit(s), and/or contract(s)] relating to the vending facility.

(17) [(16)] "Vendor agreement" means a written contract entered into between the department and a KBE vendor authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties [thereto] with respect to the vending facility.

Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes the [following] criteria estab-

lished in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Meet a [(b)] Visual diagnosis as defined in the federal Randolph-Sheppard Act at 20 USC [section] 107e(1) and the definition of blindness established in 34 CFR 395.1(c);

2. Be a [(c)] citizen of the United States;

3. Be certified [(d) Certification] that the consumer meets the general criteria of eligibility for vocational rehabilitation services from the department;

4. Have received a [(e)] high school diploma or GED certification;

5. Have [(f)] math skills at an eighth-grade level or above;

6. Have [(g)] financial skills for operating a vending business;

7. Have [(h)] verbal and communication skills;

8. Have [(i)] public relations skills;

9. Have [(j)] personal hygiene and appearance for meeting the public;

10. Be independent [(k) Independence] in performing daily living activities; and

11. Have [(l)] mobility skills.

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The KBE division director or designee;

2. The chair of the State Committee of Blind Vendors or designee;

3. A KBE vendor appointed by the chair of the State Committee of Blind Vendors; and

4. The Director of Client Services or a designee.

(b) A designee shall [(designee may] not be the counselor of the applicant[)].

(3) KBE Vendor Training Program.

(a) The KBE training shall provide on-the-job work experience and classroom instruction leading to licensure as a KBE vendor.

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the State Committee of Blind Vendors to ensure that a trainee, upon completion of the program, can demonstrate proficiency in all aspects of KBE vending facility operation.

(c) Upon successful completion of the training program, the department shall award a vendor license to the trainee.

Section 3. KBE Vendor License. (1) License Conditions.

(a) A license to operate KBE vending facilities shall be issued for an indefinite period of time.

(b) The department shall provide management services and training to assist the vendor in fulfilling the terms of the agreement.

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If information is obtained that the vending facility is not meeting operation standards or if the vendor is falling short of performance standards as determined by KBE, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if [where] appropriate, shall be made available to remedy a [any] deficiency. The department may require the vendor to participate in training provided by, [and/or arranged for] by, KBE.

(d) The department shall terminate the license of a vendor if, after affording the vendor the opportunity for a full evidentiary hearing, the department finds that:

1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement [these KBE administrative regulations, the terms and conditions of the permit or agreement, or the terms and conditions of the vendor agreement with the vendor]; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blindness established in 34 CFR 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act.

(2) Leave of absence.

(a) The department may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director.

(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.

(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:

1. [must] Resign from that vending facility; or

2. Be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

Section 4. Vendor Vacancy. (1) The department shall [may] determine that a vendor vacancy exists if [when]:

(a) A new vending facility is established; or

(b) An existing vending facility manager's position is vacated.

(2) If [When] a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

(3) If [When] the manager's position becomes vacant in a multi-vendor vending facility, the assistant manager shall assume the manager's position. The assistant position shall be abolished.

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) If [When] a vending facility manager vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall [must] be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a [any] vacancy by submitting a completed Application for Vending Facility Vacancy [the-bid] Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor to manage each vending facility.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of no fewer than three (3) representatives of the State Committee of Blind Vendors, who shall be [(appointed by the committee chair, b)] on each vending facility manager appointment.

(c) The selection process shall begin [begins] with compilation of the seniority of each bidder. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in such areas as:

1. Customer relations;

2. Cooperation with property management;

3. Cooperation with KBE staff;

4. Complaints and commendations;

5. Timely and accurate submission of monthly financial reports and set-aside payments;

6. Financial management;

7. Recordkeeping;

8. Audit reports; and

9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection [section] or declines the appointment, the director shall apply [applies] the criteria of this subsection [section] to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bid-



der's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on:

1. KBE training test scores;
2. On-the-job training reports;
3. Formal education; and
4. Prior work history.

(4) Appointment. The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be [is] rescinded and [;] the director shall select a new appointee.

(5) Emergency appointment.

(a) The department shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a [any] vending facility vacancy if [where] time does not permit adherence to the vendor appointment process for a [such occurrences as] leave of absence, appointment of a manager to another vacancy, death, or health emergency, or other similar occurrence.

(b) [emergencies:] A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment and the expected duration of the appointment.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If [When] a licensee is in "ready for employment" status and is placed as a manager of a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis not to exceed \$5,000. This amount shall [may] be paid to:

1. The stock wholesalers, inter-accounted to KBE if the initial stock at the vending facility is owned by KBE; [;] or
2. [to] The vendor exiting the vending facility.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee.

(c) Payment for additional stock, above the \$5,000, needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks [must seek] financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that [no] other funding is not available from financial institutions including [such as:] the Small Business Administration or banks. The licensee shall make affordable monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the department's representative.

(2)(a) If [When] a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall [must] purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as provided in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed [should be] at the vending facility, whether as the beginning inventory or additional inventory.

(c) [Or:] The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall [then] be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that [no] other funding is not available from financial institutions including [such as:] the Small Business Administration or banks. The vendor shall make affordable monthly payments to KBE up to the value of the stock purchases.

(3)(a) If an [In cases of] emergency appointment [appointments] of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility [may be purchased], at wholesale cost[;] from:

1. The exiting vendor; or
2. [by KBE, or KBE may purchase inventory from] Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If [When] a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from KBE.

(4) If [When] an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If [When] an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

- (a) Accept responsibility for total inventory of the vending facility; and
- (b) [shall] Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Vendor Administrative Remedies and Procedures. (1) Mediation.

(a) [Mediation is an informal option which allows a vendor to seek resolution of a dispute with a departmental action arising from the operation or administration of the vending facility program which adversely affects him:] Participation in the mediation process shall be [is] voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b)1. Within fifteen (15) working days from the occurrence of a [any] departmental action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

2. The department shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within thirty (30) working days of the receipt of the [a] request.

3. The mediation shall be held at a department office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

(c) A representative of the department [shall attend] who is authorized to bind the department to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and department mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If a [no] mutually agreeable resolution is not obtained, the vendor may request an evidentiary hearing within fifteen (15) working days of the unresolved mediation.

(2) Evidentiary hearing.

(a) If desired, a vendor shall [may] request an evidentiary hearing in writing to the director within fifteen (15) working days:

1. Of an unresolved mediation; or
2. From a department action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(b) The department shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Commissioner of the Rehabilitation Services Administration in the United States Department of Education pursuant to 34 CFR 395.13.



Section 8. State Committee of Blind Vendors. The State Committee of Blind Vendors shall be established to actively participate with the department in the major administrative and policy decisions affecting the overall administration of the Randolph-Sheppard Vending Facility Program and to perform other functions consistent with 34 CFR 395.14.

(1) Election procedures. The department shall provide for the biennial election of the State Committee of Blind Vendors consistent with procedures established by the general assembly of all blind vendors in accordance with 34 CFR 395.14.

(2) Meetings of the committee.

(a) The State Committee of Blind Vendors shall meet at least quarterly with the director or his designee in attendance. The announcement of the meeting, with the agenda as drafted by the committee chairperson and the director, shall be mailed to the committee members by KBE. Mailings shall be prepared in alternative format as necessary.

(b) The KBE staff shall record the official minutes of meetings and prepare and mail a copy of the minutes to all vendors after approval by [of] the committee chair. The minutes [These] may be mailed in alternative format as necessary.

(c) KBE shall make committee meeting space available to the chairperson for business of the State Committee of Blind Vendors. The director and committee chair shall develop an annual committee budget. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006 [current state travel regulations]. Additional meetings may [also] be eligible for reimbursement with the approval of the KBE director or department commissioner.

(d) The State Committee of Blind Vendors shall adopt bylaws, which shall [-Bylaws must] be approved by the department.

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Enter into an agreement with the department for the operation of a Randolph-Sheppard vending facility under the auspices of KBE prior to beginning operation of a vending facility; [-]

(2) Operate the vending facility in accordance with accepted business practices and in compliance with all federal, state, and local laws, regulations, and ordinances applicable to the operation of the vending facility; [-]

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner. Managers shall [must] be on-site to assure compliance with the service obligations specified in the permit or agreements for the vending facility; [-]

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs; [-]

(5) Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers; [-]

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement; [-]

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold; [-]

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18); [-]

(9) Clean, fill, and service machines and equipment daily to assure proper functioning and [-] report promptly to KBE any needed repair of equipment; [-]

(10) Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if [when] necessary, of the [such] equipment; [-]

(11) Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the department has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if [when] selecting substitutes; [-]

(12) Cooperate with vending facility audits performed periodically at KBE expense; [-]

(13) Pay the monthly set-aside amount based on net profits of all vending facilities on schedule;

(a) The monthly set-aside payments shall ~~[are to]~~ be received by the department on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer; [-]

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent; [-]

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received; [-]

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check; and [-]

(e) If ~~[Once]~~ a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order; [-]

(14) Pay resaleable stock suppliers promptly and retain all invoices and receipts; [-]

(15) Include rebates, commissions, ~~[and/or]~~ bonuses received by the vendor from suppliers as income of the vending facility and account for this income ~~[such]~~ on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form; [-]

(16)(a) Utilize department-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) [-] Make available to the department upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards; [-]

(17) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the department on the 20th of the following month, with ~~[-Only]~~ the expenses listed ~~[below may be]~~ deducted as operating expenses on the report ~~[reports to the department];~~

(a) Expendable supplies used in the vending facility;

(b) Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;

(c) Rental and commission fees paid to building management as stipulated in the vending facility agreement;

(d) Telephone and utility expenses of the vending facility;

(e) Pest control services;

(f) Delivery charges paid on resaleable stock;

(g) Janitorial services;

(h) Liability insurance;

(i) License and permits required by health departments;

(j) Employee wages; and

(k) Employee fringe benefits; [-]

(18) Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for personal use or charitable donation; [-]

(19) Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including ~~[-but not limited to:]~~ local, state, and federal taxes; [-]

(20)(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. ~~[(a)]~~ Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall ~~[Such policies must]~~ insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and [-]

2. ~~[(b)]~~ Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and ~~[such]~~ other insurance coverage required by law for both the vendor and vendor's employees; and [-]

(b) ~~[(e)]~~ Submit proof of insurance as required by this subsection ~~[section]~~ to KBE. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage; [-]

(21) ~~[Shall]~~ Not bind or obligate the department or represent to an ~~[any]~~ entity that the vendor is a legal representative, agency, or employee of the department; [-]

(22) ~~[Shall]~~ Not remove or move any KBE-owned equipment lo-

cated at any vending facility withou ~~t~~ approval from the director; [-]

(23) ~~(Shall)~~ Maintain a separate business bank account for deposit of all lottery sales and proceeds in a ~~[any]~~ vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation; [-]

(24) Adhere to the initial stock inventory requirements ~~[rules]~~ established in Section 6 of this administrative regulation; ~~[by the department in Part VI of these administrative regulations]; [-]~~

(25) Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential; [-]

(26) Participate in training arranged and paid for by the department as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the department for vending facility management training; [-]

(27) ~~[May]~~ Request access, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884 and the federal Randolph-Sheppard Act, 20 USC 107 through 107i. The ~~[Such]~~ data may be made available in alternative format. At a vendor's request, the department shall arrange a convenient time for a staff member to assist in the interpretation of the ~~[such]~~ data; and [-]

(28) ~~(Shall)~~ Have the opportunity to read and respond to each complaint or commendation ~~[all complaint(s) or commendation(s)]~~ placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by certified mail. A ~~[Any]~~ response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file.

#### Section 10. Department's Rights and Responsibilities. The department shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities; [-]

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation; ~~[as set forth in Part VI of these regulations]; [-]~~

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The department shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment provided by KBE;

(c) Approve or deny vendor requests for replacement equipment if ~~[when]~~ justified; [-]

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or ~~[/]~~ agreement obligations. Review vendor requests for additional equipment with accompanying justification for the ~~[such]~~ investment. KBE shall make the final decision and notify the vendor; and [-]

(e) Approve requests, if ~~[when]~~ justified, for vendor-purchased equipment; [-]

(4) Develop financial controls to ensure financial accountability of each vending facility; [-]

(5) Establish a set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility; [-]

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks, and take disciplinary action for persistent delinquency ~~[and/or nonnegotiable checks]; [-]~~

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

(b) ~~[-]~~ Provide, or provide for, temporary assistance ~~[and/or training to a [any] vendor determined to be remiss in recordkeeping [and/or reporting. If the [such] temporary assistance or training does not correct the deficiency, the department may require the vendor to utilize qualified bookkeeping services; [-]~~

(8) Contract for periodic audits of each vending facility at department expense; [-]

(9) Inventory and establish the wholesale value of the on-hand

saleable stock inventory if ~~[when]~~ a vendor leaves a vending facility; [-]

(10) If ~~[At any time]~~ a vendor appointment is made, ~~[KBE shall]~~ take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost; [-]

(11) Determine the product types and quantities necessary for successful operation of a vending facility if ~~[when]~~ appointing a vendor to a vending facility; [-]

(12) Provide each licensee with a copy of this administrative regulation ~~[KBE administrative regulations]~~ in alternative format as necessary; [-]

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary; [-]

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, regulations, vending facility service obligations, and generally-accepted business practices; and [-]

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be ~~[is]~~ confidential consistent with 34 CFR 361.38 and 782 KAR 1:050. Identifiable personal information shall include ~~[consists of]~~ documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be ~~[is]~~ governed by the provisions of 34 CFR 361.38 and 782 KAR 1:050. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within two (2) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be ~~[are]~~ public records pursuant to KRS Chapter 61. The KBE files shall include ~~[consist of]~~ business records concerning the operation of vending facilities and shall be ~~[are]~~ maintained by the department consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection. ~~[Pursuant to the authority vested by KRS 163.450 to 163.470, the Kentucky Application for Designation for the Randolph-Sheppard Vending Facility Program, effective November 15, 1979, as amended December 15, 1987, is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said application may be obtained from the Department for the Blind, Education and Humanities Cabinet.]~~

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

(a) Application for Vending Facility Vacancy, February 2001; and

(b) Financial Report, Kentucky Business Enterprises, August 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for the Blind, 209 St. Clair Street, P.O. Box 757, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

DENISE M. PLACIDO, Commissioner

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: December 15, 2000 at noon

#### PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Division of Health Insurance Policy and Managed Care

(As Amended at ARRS, February 13, 2001)

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

RELATES TO: KRS 304.17A-540, 304.17A-545

STATUTORY AUTHORITY: KRS 304.2-110(1)

## VOLUME 27, NUMBER 9 – MARCH 1, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate [make] reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials.

Section 1. Definitions. (1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Coverage denial" is defined by KRS 304.17A-617(1).

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Enrollee" is defined by KRS 304.17A-500(5) [(4)].

(5) [(4)] "Managed care plan" is defined by KRS 304.17A-500(9) [(8)].

(6) "Medical director" means a person meeting the requirements of KRS 304.17A-545(1), and includes a medical director of an entity under contract and delegated to perform utilization review on behalf of a managed care plan.

(7) [(5)] "Notice of coverage denial" means a letter, a notice, or an Explanation of Benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(8) [(6)] "Signature" means name, title, state of licensure and license number.

(9) "Utilization review" is defined by KRS 304.17A-600(16).

Section 2. Application. This administrative regulation shall apply to all managed care plans authorized by law to engage in managed care in the state of Kentucky.

Section 3. Appointment of Medical Director. (1) A managed care plan shall submit to the department a:

(a) Completed form HIPMC-MD-1, incorporated by reference in this Administrative regulation; and

(b) Biographical resume of each individual who shall serve as the medical director of the managed care plan.

(2) A managed care plan shall furnish the department with any change in medical director within thirty (30) days of the change.

(3) A managed care plan shall provide for an alternative medical director to serve in the event of the medical director's absence and furnish the department with information as required in subsection (1) of this section [Section 3(1) of this administrative regulation].

Section 4. Letters of Denial for Adverse Determination or Notices of Coverage Denial. (1) Letters of denial for adverse determination or notices of coverage denial shall be sent to an enrollee's last known address with a copy of same sent to the provider.

(2) Letters of denial requiring signature of the medical director of a managed care plan pursuant to KRS 304.17A-545(1)(d) shall include:

(a) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical necessity; and

(b) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical appropriateness.

(3) Notices of coverage denial shall not require the medical director's signature.

Section 5. Signature of the Medical Director. For purposes of this administrative regulation, the signature of the medical director shall include:

(1) Handwritten and copies of original signature; or

(2) Electronic signature.

Section 6. Incorporation by Reference. (1) Medical Director Report Form HIPMC-MD-1, (10/2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE A. MILLER, Commissioner  
RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: January 10, 2001

FILED WITH LRC: January 11, 2001 at 3 p.m.

### CABINET FOR PUBLIC PROTECTION AND REGULATION

#### Department of Insurance

#### Division of Health Insurance Policy and Managed Care (As Amended at ARRS, February 13, 2001)

#### 806 KAR 17:240. Data reporting requirements.

RELATES TO: KRS 304.17A-330

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate [make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-330 authorizes the commissioner to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation establishes the data elements and the format for submitting annual reports to the Department of Insurance.

Section 1. Definitions. (1) "Association" is defined in KRS 304.17A-005(1).

(2) "Electronic format" means the use of any of the following mechanisms for the submission of data to the Department of Insurance:

(a) A three and one-half (3.5) inch diskette;

(b) CD-ROM; or

(c) A zip disk in a Microsoft Excel spreadsheet.

(3) "Employer-organized association" is defined in KRS 304.17A-005(9) [(8)].

(4) "Health care provider" is defined in KRS 304.17A-005(19) [(18)].

(5) "Insurer" is defined in KRS 304.17A-005(23) [(22)].

(6) "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.

(7) "Member" means a covered person.

(8) "Member month" means a period of time that represents each month that a member or subscriber, depending upon the data request, is enrolled in a health benefit plan.

(9) "Subscriber" means the following:

(a) In the individual market, the number of individuals with a health benefit plan; or

(b) In the small group, large group, individual association, group association, or employer organized association group market, the number of certificate holders.

Section 2. Data Reporting Requirements. (1) Within the time frame prescribed by KRS 304.17A-330, an insurer authorized to write health insurance in this state, and each employer-organized association that self-insures, shall submit the following reports to the Department of Insurance:

(a) Annual Report 1 - Insurer Information Report for Premiums and Enrollment;

(b) Annual Report 2 - Premium and Enrollment Report as Member Months;

(c) Annual Report 3 - Unduplicated Enrollment Report;

(d) Annual Report 4 - Actual Monthly Enrollment Report;

(e) Annual Report 5 - Demographic Report as Member Months;

(f) Annual Report 6 - Demographic Report of Members as of December;

(g) Annual Report 7 - Insurer Information Report for Medical Service Cost;

(h) Annual Report 8 - Billed Charge and Paid Claim Report;

(i) Annual Report 9 - Medical Service Cost Report;

(j) Annual Report 10 - Insurer Information Report for Cancelled Policies; and

(k) Annual Report 11 - Policy Discontinuance and Denial Reason Report.

(2) An insurer, or employer-organized association that self-insures, who ceases operations in Kentucky shall submit the reports required by subsection (1) of this section to the Department of Insurance.

ance within 120 days after cessation.

(3) The reports required pursuant to subsection (1) of this section are contained in the Data Reporting Manual, HIPMC-DR-1 (10/00), which is incorporated by reference in this administrative regulation, and the reports shall:

- (a) Be submitted in an electronic format; and
- (b) Contain the prescribed data elements and information in the order prescribed by the Data Reporting Manual.

Section 3. Incorporated by Reference. (1) Data Reporting Manual, HIPMC-DR-1 (10/00) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. MILLER, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: January 10, 2001

FILED WITH LRC: January 11, 2001 at 3 p.m.

# PUBLIC PROTECTION AND REGULATION CABINET

## Department of Insurance

### Division of Health Insurance Policy and Managed Care

(As Amended at ARRS, February 13, 2001)

#### 806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 304.17-412, 304.17A-609, 304.17A-613, 304.18-045, 304.32-147, 304.32-330, 304.38-225

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate [make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-609 requires that the department promulgate emergency administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires that the department promulgate emergency administrative regulations to develop a process for the registration of insurers or private review agents. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).

(2) "Board" means one (1) of the following governing bodies:

- (a) The American Board of Medical Specialties;
- (b) The American Osteopathic Association; or
- (c) The American Board of Podiatric Surgery.

(3) "Coverage denial" is defined in KRS 304.17A-617(1).

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

(5) "Insurer" is defined in KRS 304.17A-600(8).

(6) "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(7) "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of the utilization review program, the release of which is governed by KRS 304.17A-613(6).

(8) "Private review agent" is defined in KRS 304.17A-600(10).

(9) "Qualified personnel" is defined in KRS 304.17A-600(13).

(10) "Registration" is defined in KRS 304.17A-600(14).

(11) "Utilization review" is defined in KRS 304.17A-600(16).

(12) "Utilization review plan" is defined in KRS 304.17A-600(17).

Section 2. Registration Required. (1) The department shall issue or renew a registration to an applicant that has met all requirements of KRS 304.17A-600 through 304.17A-619 and 304.17A-623, where applicable, and this administrative regulation.

(2) An applicant seeking issuance or renewal of registration shall:

(a) Submit an application for issuance or renewal of registration to the department as required by Section 4 of this administrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) An application for issuance or renewal of registration shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.

(4) An application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the registration.

Section 3. Fees. (1) An application for issuance or renewal of registration shall be accompanied by a fee of \$1,000; and

(2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

Section 4. Application Process. (1) An applicant shall file an application for issuance or renewal of registration with the department which shall comply with the requirements established by KRS 304.17A-600 through and 304.17A-619, including:

(a) A utilization review plan that includes the items listed in KRS 304.17A-609(1);

(b) The identification of utilization review criteria, including criteria for review of inpatient and outpatient services;

(c) Types and qualifications of personnel performing utilization review in compliance with KRS 304.17A-607(1)(a), including:

1. A list of three (3) individuals responsible for the operation of the entity performing utilization review;

2. Names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application; and

3. Qualifications of personnel employed directly or under contract by various job category.

(d) A toll-free telephone number to contact the insurer or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required by KRS 304.17A-609(4) regarding reasonable accessibility during normal business hours;

(f) If preauthorization is required, a copy of the policies and procedures to ensure availability twenty-four (24) hours a day, seven (7) days a week, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f);

(g) A copy of the policies and procedures by which an insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(i) and 304.17A-617(2)(e), concerning a denial, limitation, reduction or termination of health care benefits and which includes:

1. Date of the review decision;

2. Instructions for filing an internal appeal, including information concerning a covered person's right to request a review of the appeal by a board eligible or certified physician; and

3. Information relating to the availability of:

a. A review of a coverage denial by the department following completion of the internal appeal process; and

b. A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623.

(h) If only a part of the utilization review process, rather than the entire utilization review process, is delegated, a description of the:

1. Delegated function;

2. Entity to whom the function was delegated by name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance with paragraph (g) of this subsection.

(i) A sample copy of the notice of review decision letter to be sent in compliance with paragraph (g) of this subsection;

(j) A copy of the policies and procedures by which a covered person or provider can appeal an adverse determination or coverage de-

nial in accordance with KRS 304.17A-607(2)(c); including:

1. The method by which an appeal may be initiated, including:
  - a. An oral request followed up by an abbreviated written request, or a written request for an expedited internal appeal;
  - b. A written request for a nonexpedited internal appeal; and
  - c. The completion of any specific forms, including a medical records release consent form;
2. Time frames for conducting review of an initial decision and for issuing an internal appeal decision;
3. Procedures for expedited and nonexpedited appeals;
4. Qualifications of the person conducting internal appeal of the initial decision; and
5. Information relating to the internal appeal decision to be included in the notice of review decision, including:
  - a. The name, title, and if applicable, the license number, state of licensure, and certification of specialty of the person making the internal appeal decision;
  - b. A description of the basis for the appeal;
  - c. The decision in clear terms and sufficient detail to explain the decision; and
  - d. Instructions for initiating the external review process.
6. A sample copy of the internal appeal decision letter to be sent in compliance with paragraph (j)5 of this subsection;
- (k) A copy of the policies and procedures to:
  1. Protect the confidentiality of medical information in accordance with KRS 304.17A-609(5);
  2. Comply with requirements of KRS 304.17A-615 relating to payment if the insurer or private review agent fails to:
    - a. Provide a timely utilization review decision; or
    - b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact, including verification by electronic transmission records or telephone company logs;
  3. Comply with requirements of KRS 304.17A-619 regarding the submission of new clinical information prior to the initiation of the external review process;
  4. Ensure consistent application of review criteria for inpatient and outpatient services in the rendering of review decisions; and
  5. Comply with requirements of KRS 304.17A-607(1)(j) regarding the review and comment on protocols by participating physicians and other providers, as applicable. The policy and procedure shall include a description of the method used for considering any comments made by the participating providers.
- (l) A copy of the written materials that provide covered persons and providers with the following information at the time of enrollment and thereafter upon request, and the mechanism for disseminating the written material:
  1. Their rights, responsibilities and liabilities in accessing covered services subject to utilization review, including the documentation requirements of KRS 304.17A-615 and identify:
    - a. When utilization review is required;
    - b. Who may request utilization review; and
    - c. When the insurer or utilization review agent shall be contacted;
  2. Telephone numbers and hours of operation of the insurer or private review agent and how to contact the insurer or private review agent for a review determination after normal business hours;
  3. Time frames for utilization review decisions in accordance with KRS 304.17A-607(1)(h), including an additional twenty-four (24) hours for an insurer or private review agent to obtain needed information to provide a preadmission utilization review decision;
  4. Explanation that the failure of an insurer to make a timely determination within the required time frames shall be deemed to be an adverse determination for the purpose of initiating an internal appeal;
  5. The right to file a written complaint relating to utilization review with the department in accordance with KRS 304.17A-613(8);
  6. Appeal rights to challenge an adverse determination or coverage denial, including:
    - a. Internal appeals, including expedited appeals; and
    - b. External reviews, including expedited reviews;
  7. The right of a covered person to request departmental review of a coverage denial after an insurer or private review agent upholds a coverage denial on internal appeal, in accordance with KRS 304.17A-617(2)(e)4;
  8. The option of a covered person to request that an internal ap-

peal be conducted by a board eligible or certified physician in the appropriate specialty or subspecialty area in accordance with KRS 304.17A-617(2)(c);

9. The right of a provider to review and comment on protocols pursuant to KRS 304.17A-607(1)(j); and

10. The right of a covered person to submit new clinical information at any time during an internal appeal or external review of an adverse determination or coverage denial to an:

- a. Insurer;
- b. Provider; and
- c. Independent review entity; and

(m) If the applicant is a private review agent only, a listing of the entities for which the private review agent is performing utilization review in this state in accordance with KRS 304.17A-607(4).

(2) Upon receipt of an application for issuance or renewal of registration, the department shall:

(a) Inform the applicant if supplemental information is or is not needed;

1. Applicant shall submit requested information within thirty (30) days; or

2. If requested information is not provided to the department within thirty (30) days, the department shall:

- a. Deny the application for issuance or renewal of registration; and
- b. Not refund the application fee.

(b) Review the application and material required by KRS 304.17A-600 through 304.17A-619 and 304.17A-623, and this administrative regulation; and

(c) Approve or deny issuance or renewal of registration.

Section 5. Denial or Revocation Hearing Procedure. Upon the denial of an application for issuance or renewal of a registration, or suspension or revocation of an existing registration, the department shall give written notice of its action and advise the applicant or registration holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 6. Utilization Review Complaint Process. (1) A written complaint regarding utilization review shall be filed with the department in accordance with KRS 304.17A-613(8):

(a) A written complaint may be:

1. Handwritten or typed;
2. Electronic; or
3. Transmitted by facsimile.

(b) A written complaint shall include any information relating to the complaint.

(2) A copy of the complaint and a letter from the department shall be sent to the insurer or private review agent in accordance with KRS 304.17A-613(8), requiring the following:

(a) Any information relating to the complaint; and

(b) A response by the insurer or private review agent to the complaint, including corrective actions to resolve the complaint, if any, including time frames for those actions.

(3) Within thirty (30) days of completion of its corrective action, an insurer or private review agent shall notify the department of the implementation of the corrective action.

(4) The number, severity, recurrence, and type of complaints, if any, shall be considered by the department in reviewing an application for issuance or renewal of registration, as required by KRS 304.17A-613(9).

Section 7. Internal Appeals. In addition to the requirements of KRS 304.17A-617, as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person to request an internal appeal within sixty (60) days of receipt of a denial letter;

(2) Provide written notification of a decision as required by KRS 304.17A-617(2)(a), which shall include the:

(a) Name, title, and if applicable, the license number, state of licensure and specialty certifications, if any, of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230;

(c) Name and telephone number of a contact person who may

provide information relating to internal review; and

- (d) Date the decision was rendered;
- (3) Maintain written records of all internal appeals received during a calendar year, including the:
  - (a) Reason for the internal appeal;
  - (b) Date of request that the internal appeal was received by the insurer or private review agent;
  - (c) Date the internal appeal was conducted;
  - (d) Date of the internal appeal decision;
  - (e) Internal appeal decision; and
  - (f) Information required by Section 4(1)(j)5 of this administrative regulation; and
- (4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Contents of a Denial Letter and Notice of Coverage Denial. (1) A denial letter shall:

- (a) Be issued by an insurer or private review agent for an adverse determination in accordance with 806 KAR 17:230; and
- (b) Include the elements as required by KRS 304.17A-607(1)(i) and 304.17A-617(2)(e), and by Section 4(1)(g) of this administrative regulation; and
- (2) A notice of coverage denial, whether issued prior to or following delivery of the service, shall include:
  - (a) Identification of the provision of the schedule of benefits or exclusions that demonstrate that coverage is not available;
  - (b) The name and phone number of a contact person who can provide information regarding the notice of coverage denial;
  - (c) Instructions and timeframe for initiating an internal appeal; and
  - (d) The availability of a review of the coverage denied by the department following completion of the internal appeal process.

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall submit to the department a HIPMC-UR-2 (7/00) as incorporated by reference in this administrative regulation, for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain:

- (1) Adequate documents in order to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330 [and-330], 304.68-225 and 304.47-050. Documentation shall include:
  - (a) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;
  - (b) Availability of physician consultation; and
  - (c) Other information which shall provide proof that based on call volume, the insurers' private review agent has sufficient staff to return calls in a timely manner;
- (2) Documentation in order to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330 [and-330], 304.38-225 and 304.47-050. Documentation shall include:
  - (a) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines; and
  - (b) An abandonment rate;
- (3) Documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330 [and-330], 304.38-225 and 304.47-050. Documentation shall include proof of the insurer or private review agent's response time for returned phone calls to a provider when a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review.

- (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department ninety (90) days prior to ceasing operations:
  - (a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and
  - (b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.
- (2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department prior to ceasing

operations.

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

- (a) Utilization Review Registration Application, HIPMC-UR-1 (11/00);
- (b) Annual Utilization Review Report Form, HIPMC-UR-2 (7/00).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLLOUD, Secretary

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 14, 2000 at 3 p.m.

## CABINET FOR PUBLIC PROTECTION AND REGULATION

### Department of Insurance

#### Division of Health Insurance Policy and Managed Care

(As Amended at ARRS, February 13, 2001)

### 806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-527

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate [make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1), requires that the department promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes those requirements.

Section 1. Definitions. (1) "Provider agreement" means a contract between a managed care plan and a provider for the provision of health care services.

(2) "Risk-sharing arrangement" is defined in KRS 304.17A-500(13).

(3) "Subcontract agreement" means a contract for the provision of health care services to an enrollee between:

- (a) A provider who is a participating provider with a managed care plan and a provider who is not a participating provider with a managed care plan; or
- (b) A risk-sharing entity as referenced in KRS 304.17A-500(13) and a provider.

Section 2. Filing Requirements. (1) A sample copy of the following shall be filed with the commissioner at least sixty (60) days before its intended use:

- (a) Provider agreement;
- (b) Risk-sharing arrangement agreement; and
- (c) Subcontract agreement.

(2) A sample copy filing pursuant to subsection (1) of this section shall include:

- (a) A compensation arrangement, including a description of the:
  - 1. Payment methodology; and
  - 2. Payor as defined in the agreement; and

(b) Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section.

(3) A filing submitted to the commissioner shall include the following:

- (a) A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in this administrative regulation; and
- (b) A filing fee as follows:
  - 1. Twenty-five (25) dollars for a provider agreement or subcontract agreement; or
  - 2. Fifty (50) dollars for a risk-sharing arrangement agreement.
- (4) A filing required pursuant to subsection (1) of this section shall:



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(a) Not be considered complete until all information required by this administrative regulation is received by the Department of Insurance; and

(b) Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(5) If a managed care plan amends an existing provider agreement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

(a) An amended filing at least sixty (60) days before its intended use; and

(b) A letter that identifies and explains each amendment.

(6) The failure of a managed care plan to file a sample copy of a provider agreement or subcontract agreement, as required by subsections (1) and (5) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99.

(7) If an insurer amends an existing risk-sharing arrangement agreement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the insurer shall submit:

(a) An amended filing at least sixty (60) days before its intended use; and

(b) A letter that identifies and explains each amendment.

(8) The failure of an insurer to file a sample copy of a risk-sharing arrangement or subcontract agreement, as required by subsections (1) and (7) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99.

Section 3. Provider Agreement Requirements. A sample copy of a provider agreement filed with the commissioner shall:

(1) Comply with the requirements of KRS 304.17A-527(1);

(2) Comply with the requirements of KRS 304.17A-728;

(3) Be governed by Kentucky law; and

(4) Not include the following provisions:

(a) A most-favored nation provision in accordance with KRS 304.17A-560;

(b) A limitation on disclosure provision in accordance with KRS 304.17 A-530;

(c) A condition of participation provision in accordance with KRS 304.17A-150(4); or

(d) A mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk-sharing arrangement shall:

(1) Be filed with the commissioner by the managed care plan or insurer in conjunction with the provider agreement or risk-sharing arrangement; and

(2) Meet the requirements of Section 3(1) of this administrative regulation.

Section 5. Risk-sharing Arrangement Requirements. A sample copy of a risk-sharing arrangement filing shall:

(1) Meet the requirements of Section 3(1) of this administrative regulation;

(2) Include a Risk-sharing Arrangement Information Sheet HIPMC-R1, incorporated by reference in this administrative regulation; and

(3) Have an annual Risk-sharing Arrangement Information Sheet HIPMC-R1 filed before September 1 of each calendar year.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Face Sheet and Verification Form HIPMC-F1, (9/00); and

(b) Risk-sharing Arrangement Information Sheet HIPMC-R1, (7/00).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. MILLER, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: January 10, 2001

FILED WITH LRC: January 11, 2001 at 3 p.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Securities (As Amended at ARRS, February 13, 2001)

#### 808 KAR 10:410. Viatical settlement interests.

RELATES TO: KRS 292.340, 292.370, 292.410(1)(i)  
[292.400(14)]

STATUTORY AUTHORITY: KRS 292.330, 292.340, 292.370,  
[292.400(14); 292.410(1)(i), 292.500(1), (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 provides that it is unlawful to offer or sell a security unless the security is registered under KRS Chapter 292, or the security or transaction is exempt, or the security is a covered security. This administrative regulation establishes the requirements for the registration of viatical settlement interests. KRS 292.330 provides that it is unlawful for an agent to transact business in Kentucky unless registered under KRS Chapter 292. This administrative regulation establishes the requirements for registration of viatical settlement interests and for registration of an agent selling viatical settlement interests. [KRS 292.400(14) authorizes the commissioner to exempt from KRS 292.340 to 292.390 a security 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 a registration exemption for an offer or sale of a viatical settlement interest.]

Section 1. Definitions. (1) ~~"Issuer" of a viatical settlement interest means a viatical settlement provider or other person that purchases or otherwise acquires a viatical settlement contract for the purpose of selling a viatical settlement interest in the contract; and does not include a broker-dealer, agent, viator, or insured.~~

~~(2) "Viatical settlement contract" means a:~~

~~(a) Written agreement between a viator or insured and a viatical settlement provider for the sale, assignment, transfer, devise, or bequest to the viatical settlement provider by the viator or insured of all or a portion of the death benefit or ownership of a life insurance policy, for consideration that is less than the expected death benefit of the life insurance policy; or~~

~~(b) A contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, but does not include a contract for:~~

~~1. A loan by a life insurance company under the terms of a life insurance contract;~~

~~2. A loan secured by the cash value of a policy;~~

~~3. The assignment of a life insurance policy as collateral for a loan to a bank, saving bank, savings and loan association, credit union, or other licensed lending institution;~~

~~4. The exercise by the insured of an accelerated benefits provision under the terms of the life insurance contract; or~~

~~5. The assignment, transfer, sale, devise, or bequest of a life insurance policy, for less than the expected death benefit, by the viator to a natural person if the person does not enter into more than one (1) agreement per calendar year.~~

~~[(3) "Viatical settlement financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a life insurance policy from a viatical settlement provider, credit enhancer, reinsurer, or person that is a party to a viatical settlement contract and that has a direct ownership in a life insurance policy that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement contract and that has an agreement in writing with a viatical settlement provider to act as a participant in a viatical settlement financing transaction.~~

~~(4) "Viatical settlement financing transaction" means a transaction in which a viatical settlement provider or a viatical settlement financing~~



entity obtains financing for a viatical settlement contract, viaticated policy, or interests in a contract or policy including secured or unsecured financing, a securitization transaction or security offering either registered or exempt from registration under federal and state securities law, or a direct purchase of an interest in that policy, if that financing transaction complies with federal and state securities law.]

(2) [(5)] "Viatical settlement interest" means the entire interest or a fractional interest in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract; but does not include the initial purchase from the viator by a viatical settlement provider.

(3) [(6)] "Viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract, including a person that:

(a) Obtains financing for the purchase, acquisition, transfer or other assignment of a viatical settlement contract, viaticated policy, or viatical settlement interest; or

(b) Sells, assigns, transfers, pledges, hypothecates, or disposes of a viatical settlement contract, viaticated policy, or viatical settlement interest.

(4) [(7)] "Viatical settlement purchase agreement" means a contract or agreement entered into by an investor [a viatical settlement purchaser] to purchase a viatical settlement interest for the purpose of deriving an economic benefit.

[(8)] "Viatical settlement purchaser" means a person that, for the purpose of deriving an economic benefit, gives money or other consideration for a viatical settlement interest; but does not include an issuer, a viatical settlement financing entity, or a special purpose entity that is created solely to act as a financing source for the viatical settlement provider.]

(5) [(9)] "Viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider under a viatical settlement contract.

(6) [(10)] "Viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract, but does not include:

(a) A viatical settlement provider; or

(b) A person that acquires a viaticated policy or a fractional interest in a viaticated policy from a viatical settlement provider or a subsequent investor [viatical settlement purchaser].

**Section 2. Registration of Viatical Settlement Interests. (1) In order to register an investment contract known as a viatical settlement interest pursuant to KRS 292.370, the following activities shall be performed: [Except as established in subsection (2) of this section, an investment contract known as a viatical settlement interest may be registered under KRS 292.370 if:]**

**(a) A registration statement containing the information established in Section 3 of this administrative regulation is filed with and approved by the commissioner; [and a consent to service of process, if required under KRS 292.430, are filed with the commissioner;]**

**(b) The filing fee of \$500 [required under KRS 292.380(5)] is submitted to the commissioner; [and]**

**(c) Each investor is provided with the documents established in Section 4 of this administrative regulation; and**

**(d) A consent to service of process, if required under KRS 292.430, is filed with the commissioner.**

**(2) Registration under this administrative regulation shall not be available to an issuer if the issuer, a predecessor or affiliate of the issuer, a director, officer, or general partner of the issuer, a beneficial owner of ten (10) percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, or a partner, director, or officer of an underwriter of the securities to be offered:**

**(a) Has filed within the last five (5) years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the Securities and Exchange Commission;**

**(b) Has been convicted within the last five (5) years of a:**

**1. Felony;**

**2. Criminal offense involving fraud or deceit; or**

**3. Criminal offense in connection with the offer, purchase or sale of a security;**

**(c) Is currently subject to a state or federal administrative enforcement order entered within the last five (5) years finding fraud or deceit in connection with the purchase or sale of a security; or**

**(d) Is currently subject to an order, judgment or decree of a court of competent jurisdiction entered within the last five (5) years, temporarily, preliminarily, or permanently restricting or enjoining the subject of the order from engaging in or continuing to engage in a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security.**

**(3) Upon termination of the effective period of a registration statement filed under subsection (1) of this section, or prior to renewal of a registration statement, the issuer shall file a sales report indicating the aggregate sales price of securities sold in Kentucky during the effective period of the registration statement. [Registration-Exemption. (1) Except as provided in subsection (2) of this section, the offer and sale of a viatical settlement interest shall be exempt from KRS 292.340 to 292.390 if the offer or sale meets the requirements established in this administrative regulation:**

**(2) The registration exemption established in subsection (1) of this section shall not be available to an issuer of a viatical settlement interest if the issuer or a partner, officer, or director of the issuer, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the issuer:**

**(a) Has filed an application for registration with the department which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;**

**(b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;**

**(c) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;**

**(d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;**

**(e) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or an order denying effectiveness to a registration statement where that person was or could be deemed to have been a control person of the issuer;**

**(f) Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:**

**1. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing; denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;**

**2. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;**

**3. A United States Postal Service fraud order;**

**4. A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or**

**5. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act; or**

**(g) Has engaged in dishonest and unethical practices in the securities business.**

**(3) Pursuant to KRS 292.410(1)(i)5 the registration exemption at KRS 292.410(1)(i) shall not be available for the offer or sale of a viatical settlement interest.]**

**Section 3. Filing Requirements - Registration Statement. (1) The registration statement required under Section 2(1)(a) of this administrative regulation shall contain the following information:**

**(a) The name, address, and telephone number of the issuer, and**

the name of the contact person of the issuer;

(b) The articles of incorporation of the issuer, if a corporation;

(c) The name and address of each director and officer of the issuer along with the person's principal occupation for the past five (5) years;

(d) A general description of the program and securities offered by the issuer, but not including details of specific viatical policies or viatical settlement contracts;

(e) A description of the nature and amount of commissions, finders' fees, or other remuneration paid directly or indirectly for soliciting a sale of a viatical settlement interest in Kentucky;

(f) The issuer's most recent audited income and expense statement and balance sheet;

(g) A blank copy of the Viatical Disclosure Document Parts A and B to be furnished under Section 4 of this administrative regulation to an investor;

(h) A copy of all offering materials including any prospectus, pamphlet, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a viatical settlement interest; and

(i) A statement indicating the procedures that the agents of the issuer will use to determine the suitability of the investment for an investor and a copy of any documents used to determine suitability; and

(j) A list of individuals that will be registered as agents of the issuer in Kentucky, including the business address and GRD number, if applicable, of each individual. [Claim of Exemption. (1)(a) The exemption established in Section 2(1) of this administrative regulation shall apply if:

1. The issuer files a written claim of exemption with the department at least ten (10) days prior to the first sale of a viatical settlement interest in Kentucky;

2. The commissioner does not determine, by order, within the ten (10) days that the exemption is unavailable; and

3. At the time of filing the claim of exemption, the issuer submits a \$250 filing fee to the commissioner.

(b) The claim of exemption shall include:

1. The name, address, telephone number, and name of contact person of the issuer;

2. Articles of incorporation of the issuer, if a corporation;

3. A general description of the program and securities offered by the issuer, but not including details of specific viatical policies or viatical settlement contracts;

4. A description of the nature and amount of commissions, finders' fees, or other remuneration paid directly or indirectly for soliciting a sale of a viatical settlement interest in Kentucky;

5. The issuer's most recent audited income and expense statement and balance sheet;

6. A copy of the Viatical Disclosure Document Part A to be furnished under Section 4(2)(a) of this administrative regulation to a viatical settlement purchaser;

7. A copy of all offering materials including any prospectus, pamphlet, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a viatical settlement interest;

8. A statement indicating the procedures that the agents of the issuer will use to determine the suitability of the investment for a viatical settlement purchaser and a copy of any documents used to determine suitability; and

9. A list of individuals that will be registered as agents of the issuer in Kentucky, including the business address and GRD number, if applicable, of each individual.]

(2) The issuer shall promptly amend its registration statement [claim of exemption] if any of the information becomes inaccurate or incomplete in any material respect[, including if the issuer hires new agents].

(3) The effective period of a registration statement filed under this administrative regulation shall be [is] established pursuant to KRS 292.380[(1) and] (6).

(4) The information and documents required under KRS 292.370(2)(a) through (g) shall be omitted from a registration statement filed pursuant to this administrative regulation unless otherwise required in this administrative regulation.

(5) The commissioner may deny, suspend, or revoke a registration pursuant to KRS 292.390. [The commissioner may by order require an issuer to include additional information in its claim of exemption if the commissioner determines that the information is necessary for the protection of investors.]

(4) A claim of exemption under this section shall be effective for a period of twelve (12) months from the date the exemption is received for filing with the commissioner.]

Section 4. Disclosure Requirements for Sale of Viatical Settlement Interests. (1) The following documents shall be provided to an investor in connection with the sale of an investment contract known as a viatical settlement interest: [The exemption established in Section 2(1) of this administrative regulation shall apply if the disclosures required by KRS 292.320(1)(b) and by this section are made to a prospective viatical settlement purchaser prior to the time the viatical settlement purchaser executes a viatical settlement purchase agreement or at the time specified in this section.

(2)(a) At least forty-eight (48) hours prior to the time a prospective investor [viatical settlement purchaser] executes a viatical settlement purchase agreement, the prospective investor [purchaser] shall [must] receive a completed Viatical Disclosure Document Part A equivalent to Kentucky Form 10:410A.

(b) On or before the date when the investor [viatical settlement purchaser] is presented with a specific viatical settlement interest [contract] under an executed viatical settlement purchase agreement, the investor [viatical settlement purchaser] shall [must] receive a completed Viatical Disclosure Document Part B equivalent to Kentucky Form 10:410B.

(2) (e) The completed Viatical Disclosure Document Part A and B given to an investor [a viatical settlement purchaser] shall reasonably conform to the formatting of Kentucky Forms 10:410A and 10:410B with respect to font size, boldface type, and line spacing.

Section 5. Rescission. (1) Investor's [Viatical settlement purchaser's] right of rescission.

(a) An investor [A viatical settlement purchaser] shall have the right to rescind a viatical settlement purchase agreement at any time until ten (10) days after the investor executes a viatical settlement purchase agreement [receipt by the investor [purchaser] of a completed Viatical Disclosure Document Part B].

(b) A rescission by an investor [a purchaser] under paragraph (a) of this subsection shall be [is] sufficient if addressed to the entity designated in the Viatical Disclosure Document Part B to receive the notice and the notice is either postmarked or received by the entity within ten (10) days after the investor executes a viatical settlement purchase agreement [receipt by the investor [purchaser] of the completed Viatical Disclosure Document Part B].

(2) Required offer of rescission.

(a) Within ninety (90) days after the execution of a viatical settlement purchase agreement by an investor [a viatical settlement purchaser], the issuer shall make an offer of rescission to the investor [viatical settlement purchaser] if, during that period, the issuer has not identified a specific viatical settlement contract that is suitable for the investor [purchaser] and has not delivered a completed Viatical Disclosure Document Part B to the investor [purchaser].

(b) The issuer shall notify the investor [viatical settlement purchaser] of the offer of rescission on Kentucky Form 10:410 or its equivalent. The notice of the offer of rescission shall reasonably conform to the formatting of Kentucky Forms 10:410 with respect to font size, boldface type, and line spacing.

(c) An acceptance by an investor [a viatical settlement purchaser] of an offer of rescission shall be [is] valid if the acceptance is either postmarked or received by the entity designated in the offer within ten (10) days after the investor [viatical settlement purchaser] receives the offer.

Section 6. Agent Registration. An agent of an issuer of an investment contract known as a viatical settlement interest [An agent who, directly or indirectly, receives a commission or remuneration in connection with the offer or sale of a viatical settlement interest] shall be registered pursuant to KRS 292.330 as an agent of the issuer and shall submit a completed Form U-4 to the commissioner along with

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[provide to the commissioner] proof of passing one (1) of the following examinations administered by the National Association of Securities Dealers:

- (1) The Series 63 Uniform Securities Law Examination; or
- (2) The Series 66 Uniform Combined State Law Examination.

Section 7. Waiver of Viatical Settlement Interest Requirements. Upon the request of an issuer, the commissioner may by order waive a requirement of this administrative regulation if the commissioner determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the commissioner that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

Section 8. Availability of KRS 292.410(1)(i) for Viatical Settlement Interest. An issuer may rely on the exemption provided in [at] KRS 292.410(1)(i) for the offer or sale of a viatical settlement interest if the issuer:

(1) Otherwise meets the conditions and requirements of KRS 292.410(1)(i); and

(2) Prior to any sale in Kentucky, in reliance on this exemption, the issuer files with the commissioner a claim of exemption containing the information established [set forth] in Section 3(1) of this administrative regulation. [Denial, Suspension, or Revocation of Claim of Exemption. (1) The commissioner may by order deny, suspend, or revoke a claim of exemption with respect to a specific security or transaction if the commissioner determines that the issuer has failed to comply in a material respect with the requirements of this administrative regulation. Except as provided in subsection (2) of this section, the commissioner may not enter an order without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

(2) The commissioner may by order summarily deny, suspend, or revoke a claim of exemption pending final determination of any proceeding under this subsection if the commissioner determines that a summary order is necessary to prevent immediate and irreparable harm to investors.]

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 10:410A (February 2001 [December [August] 2000] edition), Viatical Disclosure Document Part A;
- (b) Form 10:410B (February 2001 [December [August] 2000] edition), Viatical Disclosure Document Part B; and
- (c) Form 10:410 (December [August] 2000 edition), Offer of Re-scission - Viatical Settlement Interest.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COLLEEN KEEFE, Director

APPROVED BY AGENCY: December 7, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

### **PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (As Amended at ARRS, February 13, 2001)**

#### **810 KAR 1:009. Jockeys and apprentices.**

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the power to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 grants the commission the authority to promulgate administrative regulations that [To] regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. The function of this administrative regulation is to outline the requirements for jockeys and

apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; if:

(1) The person is a licensed stable employee assistant trainer, or trainer with at least one (1) year of service with a racing stable; [and]

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions to be permitted the probationary mounts; [and]

(3) The starter has schooled the person breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race; and

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race.

(5) A person shall not ride in any probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races;

(4) Shall, when required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall be:

(a) Approved by the stewards as to competency of horsemanship;

(b) [;] Shall be granted an amateur jockey's license; [;] and

(c) His amateur status shall be duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) [(+)] Ten (10) pounds until he has ridden five (5) winners;

(b) [-and] Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year;

(d) [-] If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year from the date of the fifth winning mount, or until the 40th winning mount.

(2)(a) After the completion of conditions in subsection (1) of this section a contracted apprentice [for one (+) year] may claim three (3) pounds for one (1) year when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) No apprentice allowances may be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative

tive regulation for a period not to exceed five (5) years. These contracts shall be:

- (a) Approved by the stewards;
- (b) Filed with the racing commission; and
- (c) Binding in all respects on the parties to the contract;

(d) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate[~~on a form furnished by the commission~~].

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, or restrictions on racing, or other valid reason the commission upon recommendation of the stewards and after consultation with the racing authority which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the Kentucky Racing Commission.

(2) All riding contracts for terms longer than thirty (30) days, as well as any amendments, cancellation, or transfer, shall be in writing with signature of parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) [(1)] The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of the contract;

(b) [(2)] The contract employer possesses the character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider; and

(c) [(3)] The contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him.

(4) An [No] owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but merely provide a fee if the parties have not made any other agreement to the contrary. The fee to a jockey [~~shall be~~], in the absence of special agreement, shall be as follows:

(a) Purse \$2,000 to \$3,400: Winning mount, ten (10) percent of win purse; Second mount, \$45; Third mount, \$35; Losing mount, \$30.

(b) Purse \$3,500 to \$4,900: Winning mount, ten (10) percent of win purse; Second mount, \$55; Third mount, \$45; Losing mount, \$35.

(c) Purse \$5,000 to \$9,900: Winning mount, ten (10) percent of

win purse; Second mount, \$65; Third mount, \$50; Losing mount, \$40.

(d) Purse, \$10,000 to \$14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$45.

(e) Purse, \$15,000 to \$24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$50.

(f) Purse, \$25,000 to \$49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$60.

(g) Purse, \$50,000 to \$99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$75.

(h) Purse, \$100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, \$100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; the owner or trainer shall pay an appropriate fee to each rider engaged for the race; [-]

(b) When a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause; or [-]

(c) When a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official.

If a winning purse is forfeited through subsequent ruling of the stewards or racing commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. No rider shall have contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one

(1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. No rider shall place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these [such] wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) [-stock-tie, white or light breeches, top boots.] Safety helmet that meets the standards of the American Society for Testing and Materials (ASTM) F1163-00;

(f) A safety vest which shall meet the standards of the American Society for Testing and Materials (ASTM) F1937-98; and

(g) [approved by the commission]; and A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) Advertising, promotional, or cartoon symbols or wording which in the opinion of the commission are not in keeping with the traditions of the turf are prohibited. [Beginning January 1, 1994,] [Each jockey or jockey apprentice shall wear in all races a safety vest which shall meet the standards of the American Society for Testing and Materials (ASTM) F1937-98 [provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association].]

(4) A safety vest shall weigh no more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race.

(5) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 16. Material Incorporated by Reference. (1) The following material is [documents are] incorporated by reference:

(a) "Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, January 10, 2000";

(b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 14, 2000 at 4 p.m.

## **PUBLIC PROTECTION AND REGULATION CABINET**

### **Kentucky Racing Commission**

(As Amended at ARRS, February 13, 2001)

#### **810 KAR 1:026. Racing associations.**

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(3) require the commission to promulgate administrative regulations establishing conditions governing horse racing. This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track.

(1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the racing commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have:

(1) Red and white quarter poles;

(2) Green and white eighth poles; and

(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and

parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water [for] adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less;

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires, oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.

(2) An association shall furnish to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association ground from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses en-



tered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) An association shall for probable cause eject or exclude from association grounds a person:

(a) Believed to be engaged in:

1. A bookmaking activity; or
2. Solicitation of bets; or
3. Touting.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission;
2. Stewards; and
3. Police.

(c) Who as a business or for compensation, either directly or indirectly:

1. Accepted any thing of value to be wagered, or transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or
2. Participated in the transaction; and

(d) Attempted to use tax exempt admissions credentials not issued to him by the association.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;
2. Association security guard; or
3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report shall state the:

1. Name of person ejected or excluded;
2. Reasons for the ejection or exclusion; and
3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds. (1) An association shall file with the commission maps and plans of association grounds, showing:

- (a) Structures;
- (b) Piping;
- (c) Fire hydrants;
- (d) Fixed equipment;
- (e) Racing strip, noting elevation as filled, drained, and gapped;

and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the "Race Track Pari-mutuel and Admissions Report" required by KRS 137.180 and 138.480.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

- (1) Three (3) copies of its balance sheet; and
- (2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper.

(1) An association shall maintain a bank account that shall:

- (a) Be separate from its other accounts;
- (b) Entitled "horsemen's account";
- (c) Contain sufficient funds to pay money owing to horsemen for:
  1. Purses;
  2. Stakes;
  3. Rewards;
  4. Claims; and
  5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) Except as provided by paragraph (b) of this subsection, purse money shall be available to earners with forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.

(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or
2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

- (a) Escort starters to the post; and
- (b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

- (a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

- (a) Present on the racing strip;
- (b) Mounted; and
- (c) Ready to assist in the:
  1. Control of an unruly horse; or
  2. Recapture of a loose horse.

(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a protective helmet and a safety vest that meet the "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000", and the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998" which are standards of the American Society for Testing and Materials (ASTM), F1163-00 and F1937-98, respectively. [approved for use in racing by a racing trade association.]

Section 30. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.



(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view.

Section 31. Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than \$2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race the added value of which is less than \$10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards;

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 32. Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 34. (1) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements [Effective January 1, 1997, agreements including but not limited to stall applications, entry forms and condition books] between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including [but not limited to] loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A [No] licensee shall **not** attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to ex-

culpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these [such] activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

Section 35. Material Incorporated by Reference. (1) The following material is [documents are] incorporated by reference:

(a) "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000";

(b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998".

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law**, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 a.m.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 14, 2000 at 4 p.m.

**PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Racing Commission  
(As Amended at ARRS, February 13, 2001)**

**810 KAR 1:027. Entries, subscriptions, and declarations.**

RELATES TO: KRS 230.215, 230.240(2), 230.260(3), 230.290, 230.310, 230.320, 230.355(1) [230.240 et seq.]

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 230.260 grants the commission the authority** to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person authorized by either.

(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person authorized by either.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been and continues to be duly entered in a race. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice

or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.

(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.

(3) An entry shall be in writing or by telephone to the racing secretary. Telephone entries shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.

(a) A horse shall not race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. Persons shall be subject to appropriate disciplinary action for incorrect identification.

(c) Horses requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding, shall be registered with the commission veterinarian. Horses so registered shall remain, and removal shall require commission veterinarian approval. After inclusion, additional notification shall not be required. Horses which are not properly registered shall not be permitted to race with antileeder medications, drugs, or substances. Registration shall be made prior to entry. The racing program shall [will] indicate usage.

(5) Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.

(6) A horse shall not be entered in two (2) races to be run on the same day.

(7)(a) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry.

(c) If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing.

(d) The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race.

(e) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. Entries shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. Entries in a race shall not be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at the time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsections (5) and (7) [subsection (5)] of this section.

(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse, shall be joined as a mutuel entry and single betting interest, except as provided in subsection (7) of this section.

(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.

(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.

(5) In thoroughbred stakes races with added money of \$100,000 or more, permission may be granted by the stewards [commission] to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

(6) In allowance races, permission may be granted by the stewards [commission] to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners, to create six (6) separate betting interests. In the event more than one (1) mutuel entry is uncoupled, pari-mutuel wagering on daily double, exacta, quinella, or other [such] wagering allowed by statute [stature] shall be prohibited.

(7) In thoroughbred stakes races with gross purses of \$1,000,000 or more, permission may be granted by the stewards to uncouple mutuel entries of horses sharing common ties through training or ownership or both.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of

the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by the following conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided for in an administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence draw, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity

to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) Preferences shall not be given to a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. A declaration fee shall not be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

C. FRANK SHOOP, Chairman  
APPROVED BY AGENCY: November 14, 2000  
FILED WITH LRC: November 14, 2000 at 4 p.m.

**PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Racing Commission  
(As Amended at ARRS, February 13, 2001)**

**810 KAR 1:028. Disciplinary measures.**

RELATES TO: KRS 230.215(2), 230.260(1), (3), 230.290(2),  
230.300, 230.361(1) [230.210 et seq.]  
STATUTORY AUTHORITY: KRS 230.260 [230.210]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 grants the commission the authority to regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and commission.

Section 1. **Definition.** [Definitions:] "Steward" means a racing steward or racing judge.

Section 2. Disciplinary Measures by Stewards. Upon the finding of a violation of these administrative regulations, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:

(1) Declare ineligible for racing or disqualify:

(a) In a race any thoroughbred as provided for under 810 KAR 1:012 and 1:016; or

(b) ~~[- Declare ineligible for racing or disqualify]~~ Any licensed person in violation of 810 KAR 1:025, Section 5 or in violation of any other administrative regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;

(2) Suspend the license of any person involved in a violation of an administrative regulation for a period of time not less than five (5) nor greater than five (5) years ~~[more than 365 days]~~ as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or any portion of association grounds; or [and]

(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed \$5,000 ~~[\$1,000]~~, which sum the licensee may, if he so chooses, pay to the commission in lieu of the [such] imposed license suspension.

Section 3. Disciplinary Measures by Commission. Upon the finding of a violation of these administrative regulations or an attempted violation on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or any licensed person found to be in violation of 810 KAR 1:025, Section 5 or in violation of any other administrative regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;

(2) Deny, suspend, revoke, or declare void the license of any person involved in a violation of an administrative regulation for a period of time not less than five (5) days ~~nor greater than five (5) years~~ ~~[more than 365 days]~~ as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) ~~[The commission may]~~ Eject or exclude persons from association grounds for any length of time the commission may deem is necessary;

(4) Upon appeal and hearing de novo of a matter determined by the stewards, ~~[the commission may]~~ reverse or revise the [such] stewards ruling in all respects; except as to findings of fact by the stewards' regarding matters that occurred during an incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; or [and]

(5) In lieu of a license suspension or revocation, the commission may set a forfeiture in any amount, which the licensee may pay to the commission in lieu of the imposed license suspension or revocation. The forfeitures paid to the commission in lieu of shall not accrue to the personal benefit of any commissioner or steward~~[(s)]~~.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 14, 2000 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Racing Commission  
(As Amended at ARRS, February 13, 2001)

811 KAR 1:075. Racing and track rules.

RELATES TO: KRS 230.215, 240.240(2), 230.260(3), 230.280, 230.290(2), (3), 230.300, 230.310, 230.320 ~~[230.630(1), (3), 230.640]~~

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), 230.320(1) ~~[230.630(3), (4), (7)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 grants the commission the authority to regulate conditions under which ~~[harness]~~ racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate harness racing, track rules and proper conduct.

Section 1. Although a leading horse is entitled to any part of the track, except after selecting his position in the home stretch, neither the driver of the first horse or any other driver in the race shall do any of the following things, which shall be considered violation of driving rules:

(1) Change either to the right or left during any part of the race when another horse is so near him that in altering his position he compels the horse behind him to shorten his stride, or causes the driver of any [such] other horse to pull him out of his stride;

(2) Jostle, strike, hook wheels, or interfere with another horse or driver;

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

(4) Swerve in and out or pull up quickly;

(5) Crowd a horse or driver by "putting a wheel under him";

(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act which constitutes what is commonly [popularly] known as helping;

(7) Let a horse pass inside needlessly;

(8) Laying off a normal pace and leaving a hole when it is well within the horse's capacity to keep the hole closed;

(9) Commit any act which shall impede the progress of another horse or cause the horse [him] to "break";

(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a [such] manner as to interfere with another horse or cause the horse [him] to change course or take back;

(11) To drive in a careless or reckless manner;

(12) Whipping under the arch of the sulky; ~~[-the penalty for which shall be no more than ten (10) days suspension.]~~

(13) Crossing the inside limits of the course; and

(14) Failing to [Drivers must] set or maintain a pace comparable to the class in which they are racing. Failure to do so by going an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race will be considered a violation of this section ~~[and the judges may impose a penalty which can be a fine, suspension, or both].~~

Section 2. (1) If at a racetrack which has pylon demarcations, a horse or the horses sulky leaves the course by brushing, running over [and/or going inside of the pylons that horse may be penalized by a disqualification if in the opinion of the judges, the action:

(a) Gave the horse an unfair advantage over other horses in the race; or

(b) Helped the horse improve its position in the race.

(2) Horses using the inside to pass shall [must] have complete clearance of the pylons.

(3) Drivers striking pylons but not gaining an unfair advantage may be fined.

(4) When an act of interference causes a horse or part of the horses' sulky to be in violation of thesis rules and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Complaints, Reports of Interference. (1) Complaints.

(a) Any complaint by a driver relating to driving or other mis-

conduct during a heat shall [All complaints by drivers of any foul driving or other misconduct during the heat must] be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) Any driver desiring to enter a claim of foul or other complaint of violation of the rules, shall [must] before dismounting indicate to the judges [or barrier judge] his desire to enter a [such] claim or complaint and immediately [forthwith] upon dismounting shall proceed to the telephone or judges' stand where the [and when such] claim, objection, or complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the [such] claim, objection, or complaint shall have been entered and considered.

(2) Report of interference. A driver shall report any interference to himself or his horse by another horse or driver during a race to the designated official. [It is the duty of every driver to report to the official designated for such purpose as promptly after the conclusion of a race in which he has participated as possible, any material interference to himself or his horse by another horse or driver during a race.]

Section 4. [3:] If any of the above violations are committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if, in their opinion, the violation may have affected the finish of the race. Otherwise, penalties may be applied individually to the drivers of any entry.

Section 5. **Penalties. For a violation of Section 1 or 2 of this administrative regulation:**

(1) The offending horse shall be:

(a) Placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered; or

(b) Disqualified from receiving any winnings if any horse is prevented from finishing as a result of the violation; or

(2) The offending driver may be:

(a) Fined, not to exceed the amount of the purse;

(b) Suspended; or

(c) Expelled. [4:] [In case of interference, collision, or violation of any of the above restrictions, the offending horse may be placed back one (1) or more positions in that heat or dash, and in the event such collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings, and the driver may be fined not to exceed the amount of the purse or stake contended for, or may be suspended or expelled. In the event a horse is set back, under the provisions hereof, he must be placed behind the horse with whom he interfered.]

Section 6. [5:] Unsatisfactory Drive; Fraud. (1)(a) Every heat in a race shall be fairly contested by each horse in the race and each horse shall be driven to the finish.

(b) The judges shall consider it to be a violation if they believe that a horse was being driven:

1. With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

2. In an inconsistent manner; or

3. To perpetuate or to aid in a fraud.

(c) The driver, and anyone else acting in concert with him to so affect the outcome of the race or races may be fined, suspended, or expelled.

(d) The judges may substitute a competent and reliable driver at any time prior to the start of the heat or race.

(e) A substitute driver shall be paid from the purse money due to the horse. [Every heat in a race must be contested by every horse in the race and every horse must be driven to the finish. If the judges believe that a horse is being driven, or has been driven, with design to prevent his winning a heat or dash which he was evidently able to win, or is being raced in an inconsistent manner, or to perpetrate or to aid a fraud, they shall consider it a violation and the driver and anyone in concert with him, to so affect the outcome of the race or races, may be fined, suspended or expelled. The judges may substitute a competent and reliable driver at any time. The substitute driver shall be paid at the discretion of the judges and the fee retained from the purse money due the horse, if any.]

(2) In the event a drive is unsatisfactory due to lack of effort or carelessness, and the judges believe that there is no fraud, gross carelessness, or a deliberate inconsistent drive they may impose a penalty under this subsection not to exceed ten (10) days suspension or a \$100 fine.

Section 7. (1) A driver may be removed and another driver substituted at any time after the positions have been assigned in a race [6:] if, in the opinion of the judges, a driver is for any reason;

(a) Unfit or incompetent to drive; or

(b) Refuses to comply with the directions of the judges; or

(c) [is] Reckless in his conduct and endangers the safety of horses or other drivers in the race,

(2) ~~[-he may be removed and another driver substituted at any time after the positions have been assigned in a race, and]~~ The offending driver shall be fined, suspended or expelled. The substitute driver shall be properly compensated.

Section 8. [7:] If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out.

Section 9. [8:] Loud shouting or other improper conduct is forbidden in a race. After the word "go" is given, both feet must be kept in the stirrups until after the finish of the race.

Section 10. [9:] Drivers shall [will] be allowed whips not to exceed four (4) feet eight (8) inches, plus a snapper not longer than eight (8) inches.

Section 11. [10:] The use of any goading device, chain or mechanical devices or appliances, other than the ordinary whip or crop upon any horse in any race, training exercise, or while on association grounds, shall constitute a violation of this administrative regulation [rule].

Section 12. (1) [11:] The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop during a race, training exercise, or while on association grounds shall be considered a violation and shall be punished by a fine, suspension, or both [of not to exceed \$100 or suspension].

(2) A driver may use a whip only in the conventional manner.

(3) Wells, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

(4) Drivers are prohibited from:

(a) Whipping under the arch of the sulky;

(b) Kicking;

(c) Punching;

(d) Jabbing a horse; or

(e) [kicking, punching or jabbing a horse, or] Using the whip so as to interfere with or cause disturbance to any other horse or driver in a race.

(5) Violation of this section [rule] shall be punished by a fine, suspension, or both.

(6) ~~[not to exceed \$100 or suspension:]~~ The penalty for kicking a horse shall be a five (5) day suspension for the first offense and ten (10) days for each offense thereafter.

Section 13. (1) [12:] No horse shall wear hobbles in a race unless it starts in hobbles [he starts in the same] in the first heat.

(2) Having so started, the horse [-and having so started, he] shall continue to wear them to the finish of the race.

(3) [-and] Any person [found guilty of] removing or altering a horse's hobbles during a race, or between races, for the purpose of fraud, shall be suspended or expelled.

(4) Any horse habitually wearing hobbles shall not be permitted to start in a race without them except by permission of the judges.

(5) Any horse habitually racing free-legged shall not be permitted to wear hobbles in a race except with the permission of the judges.

(6) A [No] horse shall not be permitted to wear a head pole protruding more than ten (10) inches beyond its nose.

Section 14. [13:] Breaking. (1) When any horse or horses break

from their gait in trotting or pacing, their drivers shall at once where clearance exists, take the [such] horse to the outside and pull it to its gait.

(2) The following shall be considered violation of subsection (1) of this section:

- (a) Failure to properly attempt to pull the horse to its gait.
- (b) Failure to take to the outside where clearance exists.
- (c) Failure to lose ground by the break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on his gait is lapped on the hind quarter of the breaking horse at the finish.

(4) If in the opinion of the judges a horse or driver's actions causes another horse to be off-stride at the wire, the offending horse shall be placed behind the horse interfered with after any or all other resulting placings.

(5) Any horse making a break, which causes interference with other contesting horses, shall be placed behind any or all offended horses.

(6) The judges may set any horse back one (1) or more places if, in their judgment, any of the above violations have been committed.

Section 15. [14:] If, in the opinion of the judges, a driver allows his horse to break for the purpose of fraudulently losing a heat, he shall be liable to the penalties established in Section 5(2) of this administrative regulation [elsewhere provided for fraud and fouls].

Section 16. [15:] To assist in determining the matters contained in Sections 14 and 15 [13 and 14] of this administrative regulation, it shall be the duty of one (1) of the judges to call out every break made, and the clerk shall at once note the break and character of it in writing.

Section 17. [16:] The time between separate heats of a single race shall be no less than forty (40) minutes. No heat shall be called after sunset where the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 18. [17:] Horses called for a race shall have the exclusive right of the course, and all other horses shall vacate the track at once, unless permitted to remain by the judges.

Section 19. Should any horse in the current program fall or get loose on the track or be involved in an accident of any kind after starting to warm up, that horse will only be permitted to start after examination and approval by the commission veterinarian.

Section 20. [18:] In the case of accidents, adequate [only so much] time shall be allowed as the judges may deem necessary and proper.

Section 21. [19:] A driver shall [must] be mounted in his sulky at the finish of the race or the horse shall [must] be placed as not finishing.

Section 22. [20:] It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. In his discretion, the presiding judge may order the use of mud guards.

Section 23. [21:] Sulky. Only sulkies of the conventional dual-shaft and dual-hitch type as hereinafter described shall be permitted to be used in any races. A conventional type sulky is one having two (2) shafts which shall [must] be parallel to, and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse's back.

Section 24. [22:] Repeated Violations. Repeated [rule] violations of this administrative regulation shall be considered grounds for refusal to grant or grounds for revocation of any driver's license.

Section 25. [23:] Any violation of any sections of this administrative regulation, unless otherwise provided, may be punished by a fine

or suspension, or both, or by expulsion.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 14, 2000 at 4 p.m.

**CABINET FOR HEALTH SERVICES**  
**Commission for Children with Special Health Care Needs**  
**(As Amended at ARRS, February 13, 2001)**

**902 KAR 4:085. Newborn hearing screening equipment grant award.**

RELATES TO: KRS 194A.030(7), 200.460 to 200.499, 211.647, 216.2970 [200.490]

STATUTORY AUTHORITY: KRS 194A.030(7) [(+3)], 194A.050(1), 216.2970(1) [-211.647, HB-706]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.647 [HB-706] authorizes the Commission for Children with Special Health Care Needs to conduct necessary activities to identify infants at risk for hearing loss. In order to assist hospitals in complying with the provisions of KRS 216.2970 [Chapter 11 of HB-706], the Commission for Children with Special Health Care Needs shall provide necessary funding for the hospitals to obtain the equipment needed. This administrative regulation establishes the eligibility criteria, application process, services, reporting requirements, and appeal rights for hospitals applying to receive [interested in receiving] funding for newborn auditory screening equipment.

Section 1. Definitions. (1) "Audiologist" means a person licensed by the Commonwealth [of Kentucky] to provide audiological services.

(2) "Auditory brainstem response" or "ABR" [(+ABR)] means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst [click sounds or tone bursts].

(3) "Automated auditory brainstem response" or "AABR" [(+AABR)] means an automatic ABR resulting in a pass/refer outcome.

(4) "Kentucky Infants' Sound Start Hearing Screening Report" means an auditory screening report used for reporting pass or refer and "at risk" information to CCHCN.

(5) "Commission" or "CCHCN" [(+CCHCN)] means the Commission for Children with Special Health Care Needs.

(6) "Discharge" means a release from a hospital to the biological parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(7) "Equipment" means an AABR, ABR or OAE unit used for a newborn hearing screening in a hospital prior to discharge.

(8) "Hospital" means a hospital in Kentucky with forty (40) or more births a year.

(9) "Kentucky Infants' Sound Start" or "KISS" [(+KISS)] means a program operated by CCHCN for the purpose of tracking an infant [infants] referred from a hospital-based UNHS program [programs] through the use of information about the infant's newborn hearing screening to ensure timely, appropriate and complete services through referral, diagnostic and intervention services.

(10) "Manufacturer" means a company that produces and markets ABR, AABR or OAE equipment.

(11) "Newborn" means an infant in the hospital prior to his initial discharge.

(12) "Otoacoustic emissions" or "OAE" [(+OAE)] means an objective physiological test method for measuring responses [directly] elicited directly from the cochlea.

(13) "Physiological screening" means a testing of a newborn using AABR, ABR or OAE equipment.

(14) "Universal newborn hearing screening" or "UNHS" [(+UNHS)] means a hospital-based physiologic hearing screening program that tests at least ninety (90) percent of newborns prior to discharge.

Section 2. Hospital Eligibility Criteria. In order to be eligible for Newborn Hearing Screening Equipment Grant Funds, a hospital located in Kentucky shall be:



- (1) The location of at least forty (40) or more births annually; and
- (2) A hospital lacking hearing screening equipment for initiation of a UNHS program; or
- (3) A hospital in need of hearing screening equipment for expansion of an existing UNHS program.

Section 3. Application Process. (1) In order to be eligible for newborn hearing screening equipment grant funds, a hospital shall provide to CASHCN:

- (a) A completed grant application form with supporting documentation, which shall include:
  1. A narrative providing justification for the funding request;
  2. Proof of completion of the May 2000 survey previously provided by the UNHS-CASHCN by inclusion of:
    - a. The survey; or
    - b. A letter from UNHS-CASHCN indicating their receipt of the survey;
  - (b) A manufacturer or vendor equipment price quote for the requested equipment;
  - (c) Proof of the hospital's accreditation by the Joint Commission on Accreditation of Healthcare Organizations;
  - (d) The ~~name of the~~ hospital UNHS contact;
  - (e) [Required] Letters of support, including a letter from:
    1. The local or regional audiologist;
    2. The hospital's chief executive office or president;
    3. The hearing screening coordinator; [-]
    4. An attending primary care provider from the respective hospital; and
    5. The community's point of entry staff person with Kentucky's Early Intervention network system established pursuant to 908 KAR 2:210.

(2) A completed application [applications] with supporting documentation shall be received by September 15, 2000 at 4:30 p.m. EST at the Universal Newborn Hearing Screening Program, C/O Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217. A faxed application [applications] shall not be considered.

(3) An incomplete application [applications] or one (1) not completed in accordance with provided instructions may not be considered for funding.

Section 4. Participation Requirements. A hospital meeting the criteria in Sections 2 and 3 of this administrative regulation shall be awarded funding if the following provisions are met:

- (1) Equipment shall be purchased within thirty (30) days of receipt of funding;
- (2) Hospital hearing screening personnel shall receive training within thirty (30) days of receipt of funding and annual training from that point on; [-]
- (3) Screenings shall begin within sixty (60) days of receipt of the funding;
- (4) The hospital shall provide documentation that a screening shall be completed on at least ninety (90) percent of newborns in the hospital prior to their discharge; [-]
- (5) The hospital shall demonstrate its ability to:
  - (a) Report completed screenings by June 30 of each year; and
  - (b) Collaborate with UNHS-CASHCN in program development or expansion, and implementation;
- (6) A hospital not attaining at least a ninety (90) percent newborn screening rate as evidenced by quarterly statistics provided to the UNHS-CASHCN database shall receive technical assistance from CASHCN in order to assist the hospital in attaining the ninety (90) percent rate; and
- (7) Reporting requirements established in Section 6 shall be met.

Section 5. Grant Award. (1) Grants shall be ranked based on review of the application by selected CASHCN employees and the CASHCN Board of Commissioners.

(2) Award amounts shall be determined by rank order and funding available.

(3) No later than September 29, 2000:

(a) Each successful applicant [applicants] shall be notified by mail; and

(b) An applicant [Applicants] not awarded a grant shall be notified in writing, by certified mail, return receipt requested [using the U.S. Postal Services, registered receipt, returned mail].

(4) A contract shall be awarded in accordance with KRS Chapter 45A.

(5) Grant awards shall range from \$2,000 to \$10,000.

(6) A hospital awarded a grant shall [at least] match the grant amount on at least a dollar-for-dollar basis.

Section 6. Reporting Requirements. (1) A hospital shall report information to UNHS-CASHCN pursuant to KRS 211.647.

(2) Information to be reported to UNHS-CASHCN for a new birth who has failed the hearing test shall include the newborn's:

- (a) Last name;
- (b) First name;
- (c) Middle name;
- (d) Date of birth;
- (e) Gender;
- (f) Mother's last name;
- (g) Mother's first name;
- (h) Middle initial;
- (i) Mother's maiden name;
- (j) Mother's Social Security number.
- (k) Address where the child shall be residing after discharge;
- (l) Birth hospital's name;
- (m) Tester's last name;
- (n) Tester's first name;
- (o) Tester's middle initial;
- (p) Date of testing; and
- (q) Test results.

(3) Information to be reported to UNHS-CASHCN for a new birth who has passed the physiological and risk-factor hearing test shall not include identifying information, but shall include the:

- (a) Date the test was administered;
  - (b) Test results;
  - (c) Name of the county of residence for the newborn; and
  - (d) Name of the hospital where the test was administered.
- (4) Reporting shall be completed on a KISS [~~Kentucky Infants' Sound-Start~~] Hearing Screening Report form.

(5) A hospital unable to provide a physiological screening for more than forty-eight (48) hours because of an equipment malfunction shall contact UNHS-CASHCN by phone or fax as soon as staff are aware of the delay.

(6) Each equipment purchase [purchases] shall be registered with UNHS-CASHCN within thirty (30) days of purchase.

(7) A hospital shall submit to UNHS-CASHCN, proof that the equipment is calibrated to the manufacturer's specifications.

(8) Equipment not working shall be reported immediately to the manufacturer.

Section 7. Appeal Rights. (1) If a hospital which has not received a grant wishes to appeal, within thirty (30) days of denial of the grant, the applicant shall notify CASHCN of [to] an administrative hearing.

(2) Notice of an administrative hearing shall be provided to the hospital in accordance with KRS 13B.050.

(3) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

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

- (a) Universal Newborn Hearing Screening - Hospital Survey, 2000 edition, Commission for Children with Special Health Care Needs;
- (b) Universal Newborn Hearing Screening Report, 2000 edition, Commission for Children with Special Health Care Needs; and
- (c) Newborn Hearing Screening Equipment Grant Application and Instructions.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES GILDERSLEVE, Chairman  
ERIC FRIEDLANDER, Executive Director



VOLUME 27, NUMBER 9 – MARCH 1, 2001

JIMMY D. HELTON, Secretary  
APPROVED BY AGENCY: December 12, 2000  
FILED WITH LRC: December 14, 2000 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, February 13, 2001)

**902 KAR 10:060. On-site sewage disposal application fee.**

RELATES TO: KRS 194A.050(3), 211.180(1)(d), 211.350(6) [(5)], 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I.G. 52-g]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1)(d), [211.350(5)] 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992 c. 462, Part I.G. 52-G]

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 211.350(5) and] 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992 c. 462, part I.G. 52-g] authorize the Cabinet for Health Services [Human Resources] to establish a schedule of [reasonable] fees to cover the costs of services performed by the cabinet [with respect to on-site sewage disposal systems]. [The function of] This administrative regulation establishes [is to set forth] the fee to be charged in order to cover the actual cost to the cabinet of the administration of the on-site sewage disposal system program.

Section 1. An application [All applications] for a permit to construct, install, or alter an on-site sewage disposal system shall be filed with the cabinet or its agent, and shall be accompanied by the following fees:

(1) [(a)] On-site sewage disposal [installation] permit fee - [a fee of] thirty (30) dollars; and

(2) [(b)] On-site sewage disposal cluster system [installation] permit fee - \$600.

~~[Section 2. Fee Increases. (1) Permit fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:~~

~~[ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt)~~

~~(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar;~~

~~(3) Certified on-site sewage disposal system installers holding a valid certification to install on-site sewage disposal systems and local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:~~

~~<http://publichealth.state.ky.us/>~~

RICE C. LEACH, M.D., Commissioner  
JIMMY D. HELTON, Secretary  
APPROVED BY AGENCY: November 30, 2000  
FILED WITH LRC: December 1, 2000 at 10 a.m.

**CABINET FOR HEALTH SERVICES**  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, February 13, 2001)

**902 KAR 10:121. Inspection fees for public swimming and bathing facilities.**

RELATES TO: KRS 211.180(1)(c), 211.990(2), 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I.G., 52-g]

STATUTORY AUTHORITY: KRS 194A.050(1), (3), 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I.G. 52-g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(3) and 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch.

462, Part I.G. 52-g] authorize the Secretary of the Cabinet for Health Services [for Human Resources] to adopt a schedule of reasonable fees covering the cost of annual inspections performed [provided] by the Cabinet for Health Services [Human Resources] or a [and any] local health department. This administrative regulation establishes [sets forth] a schedule of fees for the cost of annual inspections of [inspection services related to] public swimming and bathing facilities.

Section 1. Fees for Inspections. [For inspections conducted by the department or its representatives to determine compliance with administrative regulation] 902-KAR-10:120 [adopted by the cabinet] pursuant to KRS 194A.050 and 2000 Ky. Acts ch. 549, part I.A.41 [HB 468]; Public swimming and bathing facilities shall be subject to the [payment of] the following fees:

(1) Swimming and bathing facility [facilities] with a total water surface area of less than 1,000 or less square feet or less; and a beach front [or beach fronts] of 149 [or less] [than 150] linear feet or less - eighty-seven (87) [sixty-five (65)] dollars per year.

(2) Swimming and bathing facility [facilities] with a total water surface area of 1,001 or greater [1,000] square feet or more [or greater]; and a beach front [or beach fronts] of 150 linear feet or more [greater] - \$167 [125] per year.

(3) Swimming and bathing facility prerenovation evaluation - \$200.

(4) Swimming and bathing facility plan review for gutter pools [and major reconstruction] - \$300.

(5) Swimming and bathing facility plan review for skimmer pools [and minor reconstruction] - \$150.

(6) Swimming and bathing facility plan review with minor reconstruction - \$100.

(7) Swimming and bathing facility rough-in construction inspection - \$100.

(8) Swimming and bathing facility final construction inspection - \$150.

Section 2. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury in a trust and agency account for use solely in administering the program. Inspection fees shall be submitted annually prior to May 1. Fees for a [For] newly constructed facility [facilities] [these [such] fees] shall be [initially] submitted initially at the preopening inspection and at each May 1 date thereafter.

~~[Section 3. Fee Increases. (1) Inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2001, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:~~

~~[ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt)~~

~~(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar;~~

~~(3) Owners of public swimming and bathing facilities and local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:~~

~~<http://publichealth.state.ky.us/>~~

RICE C. LEACH, M.D., Commissioner  
JIMMY D. HELTON, Secretary  
APPROVED BY AGENCY: November 30, 2000  
FILED WITH LRC: December 1, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES  
Office of Inspector General  
(As Amended at ARRS, February 13, 2001)

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.175, 216B.990, 311.560(3), (4), 314.011(8), 320.240(14)

STATUTORY AUTHORITY: KRS 202B.060, 216B.042(1)(a), 216B.175(4), [216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.240(14)] [-EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 require [and 216B.105 mandate that] the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes [provides] minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation[;] in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of persons with mental illness and [the mentally ill] who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of a [any] physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of a [any] pharmacologic or chemical agent to a [mentally ill] patient with a mental illness, with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a patient with a mental illness or mental retardation [mentally ill or mentally retarded patient] alone in a locked room.

Section 2. [Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services; continuous nursing services; psychological services; therapeutic activities; social services; and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1)(a) A general acute care hospital with a psychiatric unit shall:

1. Designate the location and number of beds for which licensure is sought;

2. Meet the requirements of 902 KAR 20:016;

3. Meet the requirements of this administrative regulation.

(b) A facility requesting licensure as an exclusively psychiatric hospital is subject to this administrative regulation. [General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this administrative regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this administrative regulation.]

(2)(a) A facility shall not be licensed as, or be called, a psychiatric hospital unless it provides the full range of services required by Section 6 of this administrative regulation and provides for the treatment of a variety of mental illnesses.

(b) 1. A facility with a certificate of need that is licensed after the effective date of this administrative regulation and that has a

mean daily census of patients whose primary illness is chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need in order to convert the necessary number of beds to chemical dependency services.

2. Licensure requirements are established in 902 KAR 20:160.

3. Mean daily census shall be as reported in the last Annual Hospital Utilization Report. [Facilities which receive certificate of need approval and are licensed after the effective date of this administrative regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.]

Section 3. [4.] Administration and Operation. (1) General requirements. A [(a) The] hospital shall comply with:

(a) This section;

(b) [the requirements of] 902 KAR 20:016, Section 3; and

(c) [The additional requirements contained in this section.

(b) The hospital shall comply with the requirements of] KRS Chapters 202A and 202B [and 902 KAR Chapter 12]; Hospitalization of mentally ill and mentally retarded].

(2) Professional staff. A facility requesting licensure as an exclusively [a] psychiatric hospital that [exclusively which] operates with an organized professional staff shall comply with the staffing [following] requirements in this subsection rather than those in 902 KAR 20:016, Section 3(8):

(a) A [The] hospital shall have a professional staff:

1. Organized under bylaws approved by the governing authority;

2. [; which is] Responsible to the governing authority [of the hospital] for the quality of clinical care provided to patients; and

3. Responsible for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt [policies or] bylaws, subject to the approval of the governing authority, which shall:

1. Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge;

2. State the necessary qualifications for professional staff membership;

3. Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. Provide a mechanism for appeal of decisions regarding staff membership and privileges;

5. Provide a method for the selection of officers of the professional staff;

6. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meetings of the professional staff; [and]

7. Provide for the appointment of standing and special committees, and include requirements for composition and organization, [frequency of and attendance at meetings;] and the minutes and reports which shall be part of the permanent records of the hospital. [These] Committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee, and quality assurance committee; and [;]

8. Establish a policy requiring a physician, or other member of the professional staff permitted to order diagnostic testing and treatment, to sign telephone orders for diagnostic testing and treatment within seventy-two (72) hours of the time the order was given.

(c) A [The] hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) A [The] hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B [and 902 KAR Chapter 12]; Hospitalization of Mentally Ill and

Mentally Retarded].

(b) ~~A~~ [The] hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion, consistent with KRS Chapters 202A and 202B [and 902-KAR-Chapter-12][, Hospitalization of Mentally Ill and Mentally Retarded].

(c) ~~A~~ [The] hospital shall [also] have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and **shall specify** [specifying] the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. ~~A~~ [The] hospital shall assure that patient rights are provided for pursuant to [the requirements of] KRS Chapters 202A and 202B [and 902-KAR-Chapter-12][, Hospitalization of Mentally Ill and Mentally Retarded].

(5) Medical records.

(a) Patient information shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;
2. The specific information to be disclosed;
3. The purpose of disclosure; and
4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court **order** [orders] or consent of patient, **authorized** [appropriate] family member [members] or **guardian** [guardians] for admission, evaluation, and treatment;
2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, **and** [as well as] a psychiatric diagnosis;
3. Results of the psychiatric evaluation;
4. A complete social history;
5. An individualized comprehensive treatment plan;
6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other [appropriate] individuals involved in treatment of patient. Progress notes shall document [all] services and treatments provided and the patient's progress in response to **the** [such] services and treatments;
7. A record of the patient's weight;
8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;
9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care, **and** [as well as] a brief summary of the patient's condition on discharge;
10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and
11. **If** [When] an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 4. [5:] Patient Management. (1) Assessment. ~~A~~ [The] hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, **and** [as well as] the psychiatric diagnosis, shall be made **for** [on] each patient at the time of admission.

(b) **A history and physical examination shall be conducted according to the requirements of [pursuant to] KRS 216B.175(2).**

1. The history and physical examination shall include:

a. A description of the patient's chief complaint, the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) ~~[c. A history of the patient's]~~ Past illnesses;

(iii) ~~[d. A history of the patient's]~~ Surgeries;

(iv) ~~[e. A history of the patient's]~~ Medications;

(v) ~~[f. A history of the patient's]~~ Allergies;

(vi) ~~[g. A patient's]~~ Social history;

(vii) ~~[h. A history of the patient's]~~ Immunizations;

c. ~~[i. A review of the patient's anatomical systems and [their] level of function at the time of the exam;~~

d. ~~[j. A patient's vital signs;~~

e. ~~[k. A general observation of the patient's;~~

(i) Alertness;

(ii) ~~[l. A general observation of the patient's]~~ Debilities; and

(iii) ~~[m. A general observation of the patient's]~~ Emotional behavior.

2. The results of the history and physical examination shall be recorded, reviewed for accuracy, and signed by the practitioner conducting the examination. [of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health.]

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on **[at least]** an assessment of the patient's presenting problems, physical health, emotional and behavioral status, **and other relevant factors**. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life

threatening.

(b) The documentation shall include:

1. The written order of a physician, advanced registered nurse practitioner, or physician's assistant;

2. ~~[a physician's, advanced registered nurse practitioner's as authorized in KRS 314.011(8) and 314.042(8), or physician assistant's as authorized in KRS 311.560(3) and (4) written order;]~~ Justification for the use of the procedure;

3. ~~[-]~~ The required consent forms;

4. ~~[-]~~ A description of [any] procedures employed to protect the patient's safety and rights; and

5. ~~[-and]~~ A description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician, advanced registered nurse practitioner ~~[as authorized in KRS 314.011(8) and 314.042(8)], or physician assistant [as authorized in KRS 311.560(3) and (4)]~~ shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and shall investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient;

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that the [such] attention was given to the patient. ~~[-and]~~

(d) Locking restraints may be used in the circumstances outlined in subparagraph 5 of this paragraph, if ~~[prior to the facility's use;]~~ the cabinet has previously found [finds] that the facility has instituted policies which comply with the provisions of paragraph (c) of this subsection and the following ~~[additional]~~ requirements:

1. Keys. A ~~[-The]~~ facility's direct care nursing staff shall:

a. Have in their possession at least two (2) keys to a [the] locking restraint so that the restraint can be ~~[immediately]~~ removed immediately in the case of an emergency;

b. ~~[and]~~ A plan designating ~~[setting forth designated]~~ nursing staff responsible for the keys; and

c. An explanation of how the keys are to be used. ~~[-]~~

2. Orders for the locking restraints shall be time-limited as follows:

a. Four (4) hours for adults up to a maximum of twenty-four (24) hours, during which time [wherein] the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

b. Two (2) hours for children and adolescents ages nine (9) to seventeen (17) up to a maximum of twenty-four (24) hours, during which time [wherein] the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

c. One (1) hour for patients under the age of nine (9) up to a maximum of twenty-four (24) hours, during which time [wherein] the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached; and

d. Orders pursuant to this paragraph shall specify the restraint type and criteria for release in the patient's medical record.

3. If, after twenty-four (24) hours, a patient still appears to need restraint [needs restraints], the patient shall receive a face-to-face reassessment by a licensed physician ~~[for continuation of the use of the restraint]~~. If the physician determines that continued restraint is necessary [restraint is continued], the physician shall write a time-limited order according to the time frames set out in subsection (2) of this section;

4. A facility may reinstitute the use of a restraint that has been discontinued if the time frame limited order for the restraint has not expired; and

5. A facility found to be in compliance with this section may use

locking restraints only under the following circumstances:

a. For the transport of forensic or other impulsively violent patients;

b. For the crisis situation stabilization of forensic and other impulsively violent patients;

c. To prevent a patient who [that] has demonstrated the ability to escape [remove themselves] from a nonlocking restraint on one (1) or more occasions ~~[from harming themselves or others]; or~~

d. For a patient [patients] requiring ambulatory restraints as approved by a behavioral health management team.

Section 5. ~~[-6.]~~ Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or shall meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. The attending physician shall assume full responsibility for diagnosis and care of his or her patient. Physician assistants and advanced registered nurse practitioners may provide services in accordance with their scope of practice and the hospital's protocols and bylaws.

2. ~~[A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.]~~

3. ~~[-]~~ [All] Incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. If a ~~[When the]~~ patient's condition requires services not available in the hospital, the patient, on ~~[upon]~~ physician's orders ~~[-except in cases of emergency-]~~, shall be transferred promptly to an appropriate level of care. A physician's order is not necessary in the case of an emergency.

3. ~~[-4.]~~ There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation or treatment of the [his] psychiatric problem, as needed;

b. The policy for referring a patient [patients] needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy for notifying a ~~[concerning notification of the]~~ patient's family of an emergency [emergencies] and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and medical services of the hospital, in keeping with their size and scope of activity.

(e) The attending physician shall state the [his] final diagnosis, complete the discharge summary, and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare ~~[the registered nurses and other]~~ nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that ~~shall be~~ [is] appropriate to the needs and interests of the patients and [is] directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following [additional] requirements:

(a) Medication [Medications] shall be administered by a registered nurse, a physician, a dentist, a physician's assistant, or an advanced registered nurse practitioner [or dentist], except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) ~~[No]~~ Medication shall be given only by [without a] written order signed by a physician, dentist [when applicable], advanced registered nurse practitioner, [as authorized in KRS 314.011(8) and 314.042(8), or] therapeutically-certified optometrist [as authorized in KRS 320.240(14)], or physician assistant. A [as authorized in KRS 311.560(3) and (4)] telephone order for medication [orders for medications] shall be given [only] to only a licensed practical or registered nurse, [nurses] or a pharmacist. The order shall be [and] signed by the ordering physician, dentist, advanced registered nurse practitioner, therapeutically-certified optometrist, or physician assistant within seventy-two (72) [twenty-four (24)] hours from the time the order is given. A telephone order [Telephone orders] may be given to a licensed physical, occupational, speech, or respiratory therapist [therapists] in accordance with the therapist's scope of practice and the hospital's protocol [protocols].

(6) Laboratory services. A [The] hospital shall comply with [the requirements of] 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) A [The] hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about a patient's [patients] development and current life situation in order [situations] to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to a patient, patient group, or family [patients, patient groups or families];

2. Identify or develop [identification or development of] community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop a mechanism [mechanisms] for exchange of appropriate information with a source [sources] outside the hospital.

(8) Dietary services. A [The] hospital shall comply with [the requirements of] 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, and [plus the additional] requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services.

(a) If radiology services are provided within the facility, the hospital shall comply with [the requirements of] 902 KAR 20:016, Section 4(6) concerning the provision of radiology [such] services.

(b) If radiology services [If they] are not provided within the facility, the hospital shall have an arrangement [arrangements] with an outside source. The arrangement [which] shall be outlined in a written plan [for the provision of radiology services]. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and relevant [any] administrative regulations [promulgated thereunder].

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. A psychiatric hospital [hospitals] providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and shall designate the location and number of beds to be used for this purpose.

PAMELA J. MURPHY, Inspector General

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 28, 2000

FILED WITH LRC: November 28, 2000 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, February 13, 2001)**

**902 KAR 45.006. Kentucky bed and breakfast.**

RELATES TO: KRS 217.005 to 217.045, 217.105 to 217.125, 217.126 to 217.175, 217.185 to 217.205, 217.280, 217.290 to 217.390 [217.215], 217.992, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS [Chapter 13B]; 194A.050, 217.125(1), 217.127, 217.135, 2000 Ky. Acts ch. 549, part I.A.41 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(1) authorizes the Secretary of the Cabinet for Health Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. [The function of] This administrative regulation establishes [is to establish] a uniform code for the regulation of food service operations of [all] bed and breakfast establishments within the Commonwealth of Kentucky [for the purpose of protecting the public health and compliance with 2000 Ky. Acts ch. 549, part I.A.41]. [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. Definitions. (1) "Secretary" means the Secretary of the Cabinet for Health Services.

(2) "Cabinet" means the Cabinet for Health Services or its designee.

(3) "Bed and breakfast establishment" means a bed and breakfast

home or a bed and breakfast inn.

(4) "Bed and breakfast home" means a private owner-occupied house having [inn-or-other-unique-residential-facility-[owner-occupied house]-where] up to five (5) guest rooms [are-provided] and in which the only meal served to guests is breakfast.

(5) "Bed and breakfast inn" means a private inn or other unique residential facility having [where] not more than nine (9) guest rooms [are-provided] and in which the only meal served to guests is breakfast. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy.

(6) "Continental breakfast" means a breakfast meal restricted to the following foods:

(a) Beverages such as coffee, tea and fruit juice [juices];

(b) Pasteurized Grade A milk;

(c) Fresh fruit [fruits];

(d) Frozen and commercially processed fruit [fruits];

(e) Baked goods, such as pastry [pastries], rolls, bread [breads], and muffins which are not potentially [nonpotentially] hazardous food;

(f) Cereal [Cereals];

(g) Jam, jelly [jams, jellies], honey, sorghum syrup or [and] other table syrup [syrops];

(h) Pasteurized Grade A cream and butter, nondairy creamer, [creams-and-butters, nondairy-creamers] or similar products;

(i) Commercially manufactured hard cheese, cream cheese, or yogurt [cheeses, commercially-manufactured-cream-cheese-and commercially-manufactured-yogurt].

(7) "Full breakfast" means a breakfast meal including foods other than those listed in the definition of "continental breakfast".

(8) "Person" means an individual, [or] a firm, partnership, company, corporation, trustee, association, or a [any] public or private entity.

(9) "Potentially hazardous food" means a [any] food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; or [and]

(c) Of plant origin which:

1. Has been treated; or

2. Are [is] raw seed sprouts.

(d) Excluding [The following are excluded]:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) values [value] of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in an unopened, hermetically sealed container [containers] that has [have] been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

Section 2. Application for a Permit to Operate; Fees. (1) A [Any] person desiring to operate a bed and breakfast establishment shall make written application for a permit on form DFS-200, provided by the cabinet. The [Such] application shall include:

(a) The name and address of the applicant;

(b) The location and type of the proposed establishment; and

(c) The signature of the applicant.

(2) Prior to approval of an application for a permit, the cabinet shall inspect the proposed establishment to determine compliance with the provisions of this administrative regulation. [The cabinet shall issue a permit to operate if the inspection reveals that the establishment complies with the requirements of the administrative regulation.]

(3) A [(2)-Each] permit to operate a bed and breakfast establishment shall be issued [only] for only the premises and person named in the application. A permit [and] shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

(4) A [(3)-Each] permit to operate a bed and breakfast establishment, unless previously suspended or revoked, shall expire on De-

cember 31, following the date of issuance and shall be renewable annually upon an application accompanied by the required fee, as follows:

(a) Bed and breakfast establishment providing [establishments that provide] a full breakfast - eighty-seven (87) [sixty-five-(65)] dollars;

(b) Bed and breakfast establishment serving [establishments that serve] only a continental breakfast - sixty-seven (67) [fifty-(50)] dollars.

Section 3. Food Supplies. (1) Food shall be in sound condition and safe for human consumption. Food shall be obtained from a source which shall comply [sources-that-comply] with the applicable laws relating to food safety. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment shall be [is] prohibited.

(2) Fluid milk and fluid milk products used shall be pasteurized and shall comply with KRS Chapter 217C and 902 KAR 50:110 [applicable-law]. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a bed and breakfast establishment.

(3) [Only] Clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

(4) [Only] Ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

Section 4. Food Protection. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food shall be protected from:

(a) Cross-contamination between foods; and

(b) [from] Potential contamination by:

1. Insects;

2. Insecticides;

3. Rodents;

4. Rodenticides;

5. Unclean equipment or utensils;

6. Unnecessary hand contact;

7. Draining;

8. [or] Overhead leakage or condensation;

9. Dust;

10. Coughs;

11. [and] Sneezes; or

12. Other agents of public health significance.

(2) The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, at all times, except during necessary times of preparation or service.

(3) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(4) Pets may be present on the premises [in-the-residential kitchen] [on-the-premises], but shall [should] not be permitted in the kitchen and shall be kept out of food preparation and dining areas during food preparation and service to the public.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during food preparation and service.

(6) Cooking facilities in the residential kitchen shall not be available to guests.

Section 5. Food Preparation. (1) Food shall be prepared:

(a) With a minimum of manual contact;

(b) [-Food shall be prepared] On a food-contact surface;

(c) With clean [surfaces-and-with] utensils that [are-clean-and] have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the food establishment shall be thoroughly cleaned with potable water before being used.

(3) Potentially hazardous food processed by cooking shall be cooked to heat all parts of the food to at least [a-minimum-temperature-of] 140 degrees Fahrenheit.

(4) For a kitchen in a [kitchens-in] bed and breakfast establishment [establishments] serving a continental breakfast only, ingredients which are potentially hazardous such as milk, cream, and eggs,



may be used in food preparation if [provided] the final product is not a potentially hazardous food. [For example,] Stove top skillet[;] or microwave produced items such as pancakes, waffles, or [and] French toast shall be [are] prohibited.

(5) For a kitchen in a [kitchens-in] bed and breakfast establishment [establishments] serving a full breakfast, potentially hazardous foods shall be cooked and immediately served to guests. The following food handling practices shall be prohibited [here]:

- (a) Cooling and reheating prior to service;
- (b) Hot holding for more than two (2) hours; and
- (c) Service of leftovers.

(6) A potentially hazardous food [foods] shall be thawed:

(a) In a refrigerated unit [units] at a temperature [not-to-exceed] forty-five (45) degrees Fahrenheit or below; or

(b) Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; or

(c) In a microwave oven if [only-when] the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or if [when] the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process if the food weighs [is less than or equal to] three (3) pounds or less.

Section 6. Food Display and Service. (1) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of:

- (a) Packaging;
- (b) [or-by-the-use-of] Easily cleanable display cases;
- (c) Serving line or salad bar protector devices;
- (d) Covered containers for self-service; or
- (e) [by] Other effective means.

(2) Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for consumer self-service in a bed and breakfast establishment [establishments] serving a continental breakfast only.

(3) [(2)](a) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers.

(b) [except-that] For table service, catsup and other sauces may be served in the original container or pour-type dispenser.

(c) Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

(4) [(3)] Ice for consumer use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from [for] contamination.

(5)(a) [(4)] Once served to a consumer, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served.

(b) A [However,] single-service creamer or a [creamers-and] completely wrapped pat [pats] of butter or margarine may be re-served if still packaged and in sound condition.

Section 7. Employee Health and Practices. (1) An employee shall not work in a bed and breakfast establishment in a capacity in which there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the employee is:

(a) Infected with a communicable disease that can be passed by food;

(b) A carrier of an organism that causes a communicable disease;

(c) Affected with a boil, infected wound, or acute respiratory care infection. [No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while affected with a boil, infected wound, or acute respiratory infection, shall work in a bed and breakfast establishment in any capacity in which there is a likeli-

hood of the [such] person contaminating food or food-contact surfaces with pathogenic organisms or transmitting a disease to another person [other persons].]

(2) An employee [Employees] engaged in a food preparation, service, or [and] warewashing operation [operations] shall [thoroughly] wash his or her [their] hands and [the] exposed portions of [their] arms thoroughly, with soap or detergent and warm water:

(a) Before starting work;

(b) [;] After smoking;

(c) [;] Eating;

(d) [;or] Using the toilet; and

(e) [;and] As often as is necessary during work to keep hands and forearms [them] clean.

(3) An employee [Employees] shall keep his or her [their] fingernails trimmed and clean.

(4) Each employee [(3) Employees] shall wear clean outer clothing.

(5)(a) An employee working in a food preparation area shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(b) An employee working in another area of a bed and breakfast establishment shall arrange his or her [(4) Hairnets, hats, scarves [scarfs] or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of bed and breakfast establishments shall arrange their] hair to prevent the contamination of food, equipment or [and] utensils.

(6) Each employee [(5) Employees] shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during [all] working periods.

(7) An employee [(6) Employees] shall consume food or use tobacco only in designated areas. A [Such] designated area [areas] shall not be located in a food preparation area [areas] or in an area [areas] where the employee's activity [eating or tobacco use of an employee] may result in contamination of food, water, equipment, or utensils.

[(7) All] Employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean while engaged in handling of food or [and] food-contact surfaces.]

Section 8. Equipment and Utensils. (1) Equipment and utensils shall be:

(a) Constructed and repaired with safe materials, including finishing materials;

(b) [shall-be] Corrosion resistant and nonabsorbent; and

(c) [shall-be] Smooth, easily cleanable, and durable under conditions of normal use.

(2) Single-service articles shall be made from clean, sanitary, safe materials.

(3) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to [nor contribute to the contamination of] food.

(4) [(2)] Safe plastic or [safe rubber or] [safe] rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or [and] distortion, and [that] are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods shall be [are] permitted for repeated use.

(5) [(3)] Single-service articles shall not be reused.

(6) [(4) All] Equipment and utensils shall be maintained in good repair.

Section 9. Cleaning and Sanitizing [Sanitation] of Equipment and Utensils [Cleaning and Sanitization]. (1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equip-



ment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be preflushed or prescraped and, ~~if [when]~~ necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The regulatory authority may allow the use of compartments other than sinks.

(b) Each of the following ~~[All]~~ five (5) steps of the warewashing process shall be completed:

1. Prerinsing or scraping;
2. Application of cleaner ~~[cleaners]~~ for soil removal;
3. Rinsing to remove an abrasive and to ~~[any-abrasives-and-re-move-or]~~ dilute cleaning chemicals;
4. Sanitizing ~~[Sanitation]; and~~
5. Air-drying and draining.

(c) The establishment shall use a sanitizing method approved by applicable provisions of the:

1. KRS Chapter 217, the Kentucky Food, Drug, and Cosmetic Act; and

2. 902 KAR 45:005, Section 17, the State Retail Food Code, [; KRS Chapter 217 and 902 KAR 45:005, shall be used.]

(d) Wash, rinse and sanitizing solutions shall be maintained in a clean condition.

(e) The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

(f) ~~If [When]~~ a chemical is ~~[chemicals-are]~~ used for sanitization, ~~it [they]~~ shall not have a concentration ~~[concentrations]~~ higher than the maximum permitted by law, ~~[and]~~ A test kit or other device that measures the parts per million concentration of the solution ~~[shall be provided-and]~~ used at least once each business day and each time the sanitizing solution is changed.

(7) Mechanical cleaning and sanitizing shall be conducted as follows:

(a) A commercial dishwasher ~~[dishwashers]~~ shall ~~[must]~~ comply with applicable provisions of the state retail food code, KRS Chapter 217 and 902 KAR 45:005.

(b) A domestic or homestyle dishwasher may be used ~~if [provided]~~ the following performance criteria are met:

1. The dishwasher ~~shall [must]~~ effectively remove physical solids ~~[soil]~~ from all surfaces of dishes.
2. The dishwasher ~~shall [must]~~ sanitize dishes by the application of sufficient accumulative heat.
3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least ~~[a-minimum-of]~~ 150 degrees Fahrenheit after the final rinse and drying cycle.
4. The dishwasher ~~shall [must]~~ be installed and operated according to manufacturer's instructions for the highest level ~~[of-sanitation]~~ ~~[sanitization]~~ possible when sanitizing the kitchen facilities' utensils and tableware. ~~[;]~~ A copy of the instructions ~~shall [must]~~ be available on the premises ~~[at-all-times]~~.

(8) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

(a) Soiled utensils prior to washing; and

(b) ~~[of]~~ Cleaned utensils after sanitizing.

~~(9) [sanitation-sanitization]-so as not to interfere with safe food handling, hand-washing-and-the-proper-use-of-dishwashing-facilities; Equipment, utensils and tableware shall be air-dried.~~

Section 10. Water Supply and Sewage Disposal. (1) Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the ~~[Cabinet-for]~~ Natural Resources and Environmental Protection Cabinet.

(2) Bottled and packaged potable water shall be obtained from a source that complies with 401 KAR 8:010 through 401 KAR 8:700 ~~[applicable-provisions-of-the-Cabinet-for-Natural-Resources-and-Environmental-Protection-and-the-cabinet]~~ and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

(3) ~~[All]~~ sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the ~~[Cabinet for]~~ Natural Resources and Environmental Protection Cabinet and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

Section 11. Toilet Facilities for Employees. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, shall be conveniently located, and shall be accessible to employees at all times.

(2) A bathroom ~~[Bathrooms]~~ opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by a window ~~[window(s)]~~ or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in a bathroom ~~[bathrooms]~~ used by a food handler ~~[handlers]~~.

(3) A toilet facility ~~[facilities]~~, including toilet fixtures and a ~~[any]~~ related vestibule ~~[vestibules]~~, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

Section 12. Hand-washing Facilities for Employees. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, and shall be conveniently located.

(2) A ~~[Each]~~ hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels ~~shall be [are]~~ prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facility ~~[facilities]~~.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall be first washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, ~~[and]~~ ceilings, and attached equipment in food preparation and service areas and in employee bathrooms of a bed and breakfast establishment ~~[establishments]~~ shall be fabricated from easily cleanable material, shall be maintained in good repair, and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Pesticides and rodenticides.

(a) A person shall not ~~[No-person-shall]~~ apply insecticides or rodenticides except:

1. In accordance with ~~[applicable]~~ requirements of KRS 217B.500 to 217B.990 ~~[Kentucky-Department-of-Agriculture's-Pesticide-Use-and-Application-Act, KRS Chapter 217B, Section 5;]~~ and 302 KAR 31:005; ~~[and]~~

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) ~~[No]~~ Open pesticide or rodenticide bait boxes shall not be used.

(c) Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils. Every container ~~[and-all-containers]~~ of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests.

Section 15. Plan Review of Future Construction. ~~If a~~ [When the] kitchen or employee bathroom ~~facility~~ [facilities] of a bed and breakfast establishment ~~is~~ [are hereafter] constructed or extensively remodeled, properly prepared plans and specifications for ~~the~~ [such] construction, remodeling, or alteration, showing layout, ~~arrangements;~~ and construction materials, ~~[and the]~~ location, size, and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before ~~the~~ [such] work is begun.

Section 16. Inspections; Notices. (1) Inspections. At least once every twelve (12) months, the cabinet shall inspect each bed and breakfast establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The cabinet representative inspecting an establishment ~~[If [Whenever] the cabinet makes an inspection of a bed and breakfast establishment, its representative]~~ shall record the findings ~~[on an inspection report form provided for this purpose],~~ and shall furnish a copy of ~~the~~ [such] inspection report ~~[form]~~ to the permit holder or his representative in charge.

(3) Issuances of notices. ~~If [Whenever] [the cabinet makes] an inspection reveals a violation [of a bed and breakfast establishment and determines that any of the requirements] of this administrative regulation [have been violated],~~ the cabinet shall notify the permit holder or ~~his representative in charge~~ [person in charge of such violations by means of an inspection report form or other written notice]. In ~~the~~ [such] notification, the cabinet shall:

(a) Establish ~~[Set forth]~~ the specific violations found; and ~~[-]~~

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

1. If ~~[When]~~ the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, not to exceed ~~[but in any event, by]~~ the time of the next routine inspection.

2. When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, ~~[but in any event,]~~ within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet, ~~[but in any event,]~~ not to exceed ten (10) days.

4. If ~~[When]~~ the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of ~~the~~ [such] notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within ~~the~~ [such] ten (10) day period.

5. The report of inspection shall state:

a. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation, shall result in regulatory action up to and including suspension of the permit, as provided in KRS 217.126.

b. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request for hearing is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400. ~~[that the failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings shall [will] be provided if a written request for hearing is filed in accordance with 902 KAR 1:400.]~~

(c) State that failure to comply with a ~~[any]~~ notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from a ~~[any]~~ notice of adverse inspection findings shall ~~[will]~~ be provided if a written request for a hearing is filed with the cabinet within ten (10) days following the

service of the notice for correction.

(4) Service of notice. A notice ~~[notices. Notices]~~ provided for under this section shall be ~~[deemed to have been]~~ properly served ~~if~~ [when] a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or ~~the~~ [such] notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of ~~the~~ [such] notice shall be filed with the ~~[records of the]~~ cabinet.

Section 17. Suspension and Revocation of Permits. (1)(a) An establishment's permit shall be suspended immediately, without hearing, upon notice to the permit holder if:

1. ~~[If]~~ [Whenever] The cabinet has reason to believe that an imminent public health hazard exists;

2. ~~[-or if]~~ [whenever] The permit holder has interfered with the cabinet in the performance of its duties; or

3. ~~[-or if]~~ The establishment rating score is less than sixty (60).

~~(b) [-the permit may be suspended immediately upon notice to the permit holder without a hearing.]~~ [In such event,] The permit holder may request a hearing.

(2) The cabinet shall allow a permit holder a reasonable opportunity to correct a ~~[In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct the]~~ violation. The cabinet shall notify, in writing, [If] [same. Whenever] a permit holder or operator who fails ~~[has failed]~~ to comply with a ~~[any]~~ written notice issued under the provisions of this administrative regulation, ~~[the permit holder or operator shall be notified in writing]~~ that the permit shall be suspended at the end of ten (10) days following service of ~~the~~ [such] notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended permits. A ~~[Any]~~ person whose permit has been suspended may ~~[at any time]~~ make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of ~~[any of]~~ the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a ~~[the]~~ permit may be permanently revoked, after an opportunity for a hearing has been provided by the cabinet. Before a permanent revocation action is taken ~~[Prior to the [such] action],~~ the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of ~~the~~ [such] notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. A permit may be suspended for cause pending its revocation or a hearing ~~[relative thereto]~~.

(5) Hearings. [All] Administrative hearings shall be conducted in accordance with 902 KAR 1:400 and KRS Chapter 13B.

[Section 18. Fee Increases. (1) Permit fees established by this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next whole dollar.

(3) Bed and breakfast establishment owners holding a valid permit to operate on March 31 prior to the July 1 increase and the local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us>

RICE C. LEACH, M.D., Commissioner

VOLUME 27, NUMBER 9 – MARCH 1, 2001

JIMMY D. HELTON, Secretary  
APPROVED BY AGENCY: November 30, 2000  
FILED WITH LRC: December 1, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, February 13, 2001)

902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125[(2), (3); (4)], 217.811, 2000 Ky. Acts ch. 549, part I.A.41  
STATUTORY AUTHORITY: KRS 194A.050, 217.125(1) [(2), (3); (4); 217.811], 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992-c. 462; Part I, G-52, g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(2), [and] 217.811 and 2000 Ky. Acts ch. 549, part I.A.41 authorize the Secretary of the Cabinet for Health Services [Human Resources] to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and seasonal restricted food concessions for permits to operate and for inspection [inspectional] activities carried out by the Cabinet for Health Services [Human Resources]. This administrative regulation establishes [sets forth] the schedule of fees [fee to be charged].

Section 1. Fees. (1)(a) A permit fee is [Permit fees are] required for inspections conducted by the cabinet or its representatives to determine compliance with:

1. Administrative regulations [adopted by the cabinet] for salvage distributors and salvage processing plants; and  
2. KRS 217.025, 217.035, and 217.037 for [applicable to] food manufacturing plants and food storage warehouses.

(b) A fee shall be assessed according to the total square footage of the establishment, [shall be assessed] as follows:

1. 0 - 1,000 [5,000] square feet - seventy-five (75) [sixty (60)] dollars;  
2. 1,001 - 5,000 [5,001 - 30,000] square feet - eighty-five (85) [seventy-five (75)] dollars;  
3. 5,001 - 30,000 [30,001 - and over] square feet - \$147; [240]  
4. 30,001 - 40,000 square feet - \$275; or  
5. 40,001 or more square feet - \$290.

(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations [adopted by the cabinet] pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

1. Adulteration;  
2. Misbranding;  
3. Packaging; and  
4. Labeling of food products.

(b) A [The] fee shall be assessed according to the total square footage of the establishment, as follows:

1. 0 - 1,000 square feet - twenty-seven (27) [twenty (20)] dollars;  
2. 1,001 - 10,000 square feet - fifty-three (53) [forty (40)] dollars; [and]  
3. 10,001 - 20,000 [and over] square feet - ninety (90) [seventy (70)] dollars;  
4. 20,001 - 30,000 square feet - ninety-five (95) [seventy-five (75)] dollars; or  
5. 30,001 or more square feet - \$100.

(c) An application for a permit to operate a mobile retail food store shall be accompanied by a fee of twenty-seven (27) [twenty (20)] dollars.

(3) An [With respect to vending machine companies, each] application for a permit to operate a vending machine company shall be accompanied by a fee of twenty-seven (27) [twenty (20)] dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

(a) One (1) - twenty-five (25) [twenty (20)] machines - \$107 [eighty (80)] dollars;

(b) Twenty-six (27) - fifty (50) [forty (40)] machines - \$160 [120];

(c) Fifty-one (51) - 100 [eighty (80)] machines - \$213 [160];

(d) 101-150 machines - \$253; or [190; and]

(e) 151 and over machines - \$414 [340].

(4) An [With respect to food service establishments, each] application for a permit to operate a food service establishment shall be accompanied by a fee of sixty (60) [forty-five (45)] dollars plus the following fees, if applicable:

(a) For a permanent food service establishment, according to the number of seats, as follows:

1. Zero to twenty-five (25) seats - sixty (60) dollars annually;

2. [Permanent food service establishments with no seats or twenty-five (25) seats or less - sixty (60) [forty-five (45)] dollars per year;

(b) Permanent food service establishments with Twenty-six (26) to fifty (50) seats - ninety (90) [sixty-five (65)] dollars annually;

3. [per year;

(c) Permanent food service establishments with Fifty-one (51) to 100 seats - ninety-five (95) [seventy-five (75)] dollars annually;

4. [per year;

(d) Permanent food service establishments with 101 to 200 seats - \$100 annually;

5. [per year;

(e) Permanent food service establishments with 201 or more seats - \$105 annually [per year];

(b) [(f)] Drive-through window - \$125 per year;

(c) [(g)] Catering operation - \$110 per year; or

(d) [(h)] Mobile food unit - \$120 per year. [more than fifty (50) seats - seventy-five (75) dollars per year.]

(5) An [With respect to temporary food service establishments, each] application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event, as follows [the following fee]:

(a) One (1) to three (3) day event - twenty-five (25) dollars; [or]

(b) Four (4) to fourteen (14) day event [days] - thirty (30) dollars. [a fee of twenty (20) dollars.]

(6) An [With respect to seasonal restricted food concessions, each] application for a permit to operate a seasonal restricted food concession within a local health department jurisdiction shall be accompanied by a fee of thirty-three (33) [twenty-five (25)] dollars.

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by a local health department [departments] shall be deposited in the Kentucky State Treasury.

[Section 3. Fee Increases. (1) Permit and inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Owners of retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions, holding a valid permit to operate and the local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:  
<http://publichealth.state.ky.us>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

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**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, February 13, 2001)**

**902 KAR 45:120. Inspection fees; permit fees; hotels, mobile home parks, [and] recreational vehicle parks, youth camps and private water supplies.**

RELATES TO: KRS 211.180, 219.021, 219.041, 219.340, 219.350, 219.390, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 211.180(2) [219.021], 219.041(1), 219.340, [219.350;] 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992 c. 462, part I, G. 52, g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050, 219.041, and 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992 c. 462, part I, G. 52, g] authorize the Secretary for the Cabinet for Health Services [Human Resources] to provide by administrative regulation a schedule of reasonable fees to be paid by hotels, mobile home parks, [and] recreational vehicle parks, youth camps and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health Services [Human Resources]. This administrative regulation establishes [is to set forth] the permit and inspection fees to be charged to hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

Section 1. Fees for Inspections. An annual fee shall be assessed for an inspection [For inspections] conducted by the cabinet or its representative [to determine compliance with administrative regulations adopted by the cabinet] of a hotel or youth camp, or for sampling of a [pursuant to KRS 219.041 and 211.180, hotels, youth camps and] private water supply according to the following schedule [sampling; shall be subject to the payment of the following fees]:

(1) A hotel with:

(a) One (1) to [Hotels with] twenty-five (25) rooms [or less] - fifty-three (53) [forty (40)] dollars; [per year;]

(b) [(2) Hotels with] Twenty-six (26) to fifty (50) rooms [or more] - ninety (90) [seventy-five (75)] dollars; [per year;]

(c) [(3) Hotels with] Fifty-one (51) to 100 rooms - ninety-five (95) dollars; [per year;]

(d) [(4) Hotels with] 101 rooms to 200 rooms - \$100; [per year;]

(e) [(5) Hotels with] 201 rooms to 300 rooms - \$110; [per year;]

(f) [(6) Hotels with] 301 to 400 rooms - \$120; [per year;]

(g) [(7) Hotels with] 401 or more rooms - \$130 [per year;]

(2) Youth camps:

(a) [(8)] Day youth camp [camps] - forty (40) dollars; [per year;]

(b) [(9)] Primitive youth camp [camps] - forty (40) dollars; [per year;]

(c) [(10)] Residential youth camp [camps] with:

1. One (1) to twenty (20) beds - forty (40) dollars; [per year;]

2. [(11) Residential youth camps with] Twenty-one (21) to fifty (50) beds - fifty (50) dollars; [per year;]

3. [(12) Residential youth camps with] Fifty-one (51) or more beds - sixty (60) dollars; and

(3) Sampling of private water supply [per year;]

[(13) Private water supply sampling] fifteen (15) dollars.

Section 2. Permit Fees for Hotels and Mobile Home Parks and Recreational Vehicle Parks. (1) An [Each] application for an annual permit to operate a hotel;] shall be accompanied by fee of [a] sixty (60) dollars [dollar annual fee] [as follows: Hotels - forty-five (45) dollars per year].

(2) A [An] [Each] application for an annual permit to operate a mobile home park or recreational vehicle park shall be accompanied by a fee as follows:

(a) mobile home park or recreational vehicle park with:

(a) One (1) to ten (10) spaces [nine (9) {ten (10)} spaces or less] - \$107 [eighty (80) dollars];

(b) Eleven (11) to [Mobile home park or recreational vehicle park with ten (10)] fifty (50) spaces - \$150;

(c) [Mobile home park or recreational vehicle park with] Fifty-one (51) to 100 spaces - \$160;

(d) [Mobile home park or recreational vehicle park with] 101 to

200 spaces - \$170;

(e) [~~Mobile home park or recreational vehicle park with~~] 201 or more spaces - \$180. [Parks with more than ten (10) spaces - \$120;]

(3) An [Each] application for a permit to construct or alter a mobile home park or recreational vehicle park shall be accompanied by a fee of forty-seven (47) [thirty-five (35)] dollars.

Section 3. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate [as required by KRS 219.021 or 219.340 as applicable].

Section 4. Exemptions. (1) A facility [All facilities] operated by the Cabinet for Health Services [Human Resources] or the Justice [Corrections] Cabinet shall be exempt from the payment of inspection fees.

(2) If a local health department samples a private water supply as part of an investigation of illness, the sample shall be taken without charging a fee. [~~Local health departments may exempt private water supply sampling from payment of a fee as a result of an investigation of illness.~~]

[~~Section 5. Fee Increases. (1) Permit and inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:~~

~~<ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>~~

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Owners of hotels, mobile home and recreational vehicle parks, and youth camps holding a valid permit to operate and the local health departments shall receive written notification of the fee increase no later than June 1 each year. If a private water supply is not sampled due to an investigation of illness, the local health department shall advise the requesting individual of the current fee. The fees shall be posted on the Department Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us/>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

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**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Physical Health**  
**(As Amended at ARRS, February 13, 2001)**

**907 KAR 1:019. Pharmacy services.**

RELATES TO: KRS 61.805 through 61.850, 205.520, 205.5631 through [to] 205.5639, 205.6316, 205.8451, 217.015, 217.822, 311.550, 311.560, 314.011, 314.042, 315.010, 315.300, 42 CFR 440.120, 447.331, 447.332, 447.333, 447.334, 42 USC 1396a, b, c, d, r-8

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.561, 205.5632(2), (4)(a), 205.5634(2), [205.5631-]205.5639(2)

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 provisions relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Commissioner" is defined in KRS 205.5631(2).

(2) "Department" means the Department for Medicaid Services or

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its designated agent.

(3) **"DMRAB" means the Drug Management Review Advisory Board.**

(4) **"Dosage form" means a tablet, capsule, elixir, cream, or other distinct physical formulation of a drug.**

~~[(4) "DMRAB" means the Drug Management Review Advisory Board.]~~

(5) ~~[(2)]~~ "Drug class" means a designation which indicates the therapeutic properties of a drug.

(6) ~~[(3)]~~ "Drug file" means the Kentucky Medicaid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including a drug requiring or not requiring prior authorization.

(7) ~~[(4)]~~ "FDA" means Food and Drug Administration.

~~[(5) "Legend drug" is defined in KRS 217.015.~~

~~(6) "Line extension" means a new strength, dosage form, delivery system, or indication of a drug.]~~

(8) ~~[(7)]~~ "Manufacturer" is defined in KRS 315.010(12) [315-126].

(9) **"Medically necessary" or "medical necessity" means that a covered benefit shall be:**

(a) **Provided in accordance with 42 CFR 440.230;**

(b) **Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;**

(c) **Clinically appropriate in terms of amount, scope, and duration based on generally-accepted standards of good medical practice;**

(d) **Provided for medical reasons rather than primarily for the convenience of the member, caregiver or the provider;**

(e) **Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;**

(f) **Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and**

(g) **Provided in accordance with early and periodic screening, diagnosis and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441 Subpart B for Medicaid eligible recipients under twenty-one (21) years of age.**

(10) ~~[(8)]~~ "Official Compendia" is defined in KRS 217.015(31).

(11) ~~[(9)]~~ "Orphan drug" means a drug or biological **product** [means] for use in a rare disease or condition[;] [and] ~~that~~ has been designated an [granted] orphan drug [designation] by the Food and Drug Administration.

(12) ~~[(10)]~~ "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

(13) **"Pharmacological category" is defined in KRS 205.5632(4)(b).**

(14) **"Prescription drug" means a legend drug as defined in KRS 217.015(28).**

(15) ~~[(11)]~~ "Termination date" means the last date, ~~as established by a drug manufacturer, that the drug [determines a national drug code] may be dispensed by a provider.~~

Section 2. Covered Benefits [~~Prescribed Drug Coverage~~] and Limitations Relating to the Outpatient Drug Program. A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist [~~in accordance with 907 KAR 1:021~~] shall be provided in accordance with this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent and web site, which may be accessed at:

<http://efcchs.chr.state.ky.us/ehs/dms/Drug%20File/extract.doc>.

The prior authorization status shall be specified in an electronic format with the drug file. The drug file shall be updated from a national pharmacy pricing service. A copy of the current drug file shall be filed with the Regulations Compiler and shall be available to the public in accordance with Section 11 ~~[(10)]~~(2) of this administrative regulation. A new drug shall be covered as specified in KRS 205.5632 unless the commissioner documents pursuant to KRS 205.5634(3) that the drug poses a significant safety issue or imposes an inappropriate financial burden upon the Medicaid Program..

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug for which the FDA has issued a "less than effective (LTE)" rating in accordance with 42 USC 1396r-8(k)(2)(A)(ii)-(iii) **and 21 CFR 310.6(b)(1);**

(b) A drug which the FDA has determined is "identical, related, or similar to an LTE" drug in accordance with 42 USC 1396r-8(k)(2)(A)(ii)-(iii) **and 21 CFR 310.6(b)(1);**

(c) A drug[;] for which the drug manufacturer has not entered into or complied with a rebate agreement in accordance with 42 USC 1396r-8(a), unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the nonrebated drug;

(d) A drug that has reached the [which has a] termination date established [issued] by the drug manufacturer;

(e) Nursing facility items as follows:

1. Ace bandage;
2. Alfalfa oil;
3. [Angiocatheter (for IV);] Antiembolism hose;
4. Bedding;
5. Beverages;
6. Bran oil;
7. Chlorophyll;
8. Cleansing agents;
9. Colostomy supplies;
10. Cough drops;
11. Dental rinses;
12. Diabetic supplies;
13. Dressings;
14. Food supplements and supplies related to their administration;
15. Formaldehyde;
16. Gargles;
17. Garlic oil;
18. Gelatin;
19. Glutaraldehyde;
20. Hydrogen peroxide;
21. Iodine;
22. Intravenous catheters and supplies;
23. Kelp;
24. Keratolytic agents;
25. Lecithin tablets;
26. Levine tube;
27. Liniments;
28. Lipotropic agents;
29. Live yeast;
30. Lozenges;
31. Methylsalicylates;
32. Mineral oil;
33. Miscellaneous supplies;
34. Naso-gastric tube;
35. Oat bran;
36. Pigmenting agents;
37. Placebos;
38. Protection items;
39. Povidone iodine swabs;
40. Rubbing alcohol;
41. Sanitary or personal items;
42. Shark liver oil;
43. Skin lubricant lotions and creams;
44. Soaps;
45. Sulphur;
46. Tannic acid;
47. Vinegar;
48. Wheat bran; or
49. Witch hazel;

(f) A drug or drug class [~~of drug~~] listed in 42 USC 1396r-8(d)(2) unless it is:

1. [~~a. Specified within the drug class; and~~
- b.] Placed on the drug file; or

2. Prior authorized [~~using the prior authorization criteria of the department as specified~~] in accordance with Section 3(3) of this administrative regulation; or

(g) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the

Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug:

(a) If medically necessary; [~~1. For which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a); or~~

~~2. Which has a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; and]~~

(b) If [Which is] prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia or peer-reviewed medical literature; and

(c) If the drug is:

1. A drug for which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a);

2. A drug which has a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; or

3. A drug which has an exemption from the department in accordance with subsection (2)(c) of this section.

(4) Limitations within the Outpatient Drug Program.

(a) With the exception of a prescription identified in paragraph (b) of this subsection, a prescription shall not be refilled:

1. More than five (5) times; or

2. More than six (6) months after the [original] prescription has been written.

(b) A prescription requiring a pharmacist to combine more than one (1) active ingredient shall not be refilled more than six (6) months after the [original] date [of] the prescription was first filled.

(c) A recipient placed in lock-in status pursuant to 907 KAR 1:677 shall receive services in accordance with 907 KAR 1:677.

(5) Prescription requirements.

(a) Practitioner authorization shall be evidenced by the actual signature of the prescriber:

1. On each prescription not telephoned to [into] the pharmacy;

2. On a Schedule II controlled substance prescription; or

3. On a prescription in which the prescriber certifies that, in his medical judgment, a specific brand shall be medically necessary for a particular patient. Certification procedures shall be in accordance with 42 CFR 447.331 and [447.332;] 42 USC 1396r-8(e) [~~and KRS 247.822~~], which mandate the following:

a. The certification shall be written in the prescriber's handwriting;

b. The certification shall be written directly on a prescription blank, nursing facility order sheet, or a separate sheet; [;] [;

(i) Prescription blank;

(ii) Nursing facility order sheet; or

(iii) A separate sheet;

c. The certification document shall be attached to the original prescription or order sheet; [;]

d. If the certification has been written on a separate sheet, the name of the recipient and the specific medication shall also appear on the sheet; [;]

e. If more than one (1) drug is written on the prescription blank, the certification shall be written for each drug requested; and [;]

f. The certification shall contain the phrase "brand medically necessary" or "brand necessary".

(b) For a telephone prescription, [~~except as provided in paragraph (a) of this subsection;~~] the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

1. If a prescriber indicates that a specific brand is medically necessary, the pharmacy shall inform the prescriber of the need for a handwritten certification [certificate].

2. The certification [certificate] shall be delivered to the pharmacy by the recipient upon receipt of the prescription or mailed to the pharmacist by the prescriber.

3. The pharmacist shall obtain the prescriber's certification no later than forty-five (45) days from the date the prescription is transmitted by telephone.

(c) A prescriber's identification number shall be made available by a prescriber in writing or orally and shall be recorded by the pharmacist prior to dispensing, to identify a prescriber as follows: [Prescriber's license number;]

1. A [Kentucky Medicaid physician shall use his] five (5) digit Kentucky license number for a physician licensed in Kentucky or the state license number that authorizes prescriptive privileges for a physician who practices in another state; [;]

2. A Kentucky [dentist, optometrist, or podiatrist shall use his] license number, including applicable alpha characters for a dentist, optometrist, or podiatrist licensed in Kentucky or the state license number that authorizes prescriptive privileges for a dentist, optometrist, or podiatrist who practices in another state; [;]

3. A Kentucky [advanced registered nurse practitioner (ARNP) shall use his] registration number, including alpha characters for an advanced registered nurse practitioner (ARNP) who is registered and designated to engage in advanced registered nursing practice in accordance with KRS 314.042 or the state registration number or unique personal identification number that authorizes prescriptive privileges for an advanced registered nurse practitioner who practices in another state; [;]

4. A Kentucky [physician assistant shall use his] certification number, including alpha characters for a physician assistant certified to practice in Kentucky or the state certification number or unique personal identification number that authorizes prescriptive privileges for a physician assistant who practices in another state; or [;]

5. The license number of the physician who supervises a physician who does not have a Kentucky state license number on file and who is enrolled in a graduate medical education program. [~~An out-of-state prescriber shall use his state license number, including alpha characters, up to ten (10) characters.~~

6. ~~An out-of-state ARNP or physician assistant shall use his unique personal identification number that authorizes prescriptive privileges in his respective scope of practice.~~

7. ~~A licensed physician, enrolled in an approved graduate medical education program and working under the direct supervision of a licensed practitioner, shall use the license number of the supervising practitioner.~~

(d) Quantity requirements. Except as provided in subparagraphs 1, 2, and 3 of this paragraph [for the following], a [An original] prescription shall be limited to a maximum of thirty (30) day supply; [except]; [;]

1. A refill of a maintenance prescription shall not occur less than twenty-three (23) days from the last date the medication was dispensed unless a pharmacist receives a maintenance exception from the department. The pharmacist shall request an exception by completing and submitting a Prior Authorization Request Form, MAP-122 or calling the department's prior authorization telephone number. [;] [;

a. ~~Completes a prior authorization request or calls the department's prior authorization telephone number; and~~

b. ~~Requests authorization to refill a prescription before the twenty-three (23) day limit;~~

2. A prescriber or pharmacist may request an exception to the thirty (30) day maximum supply [~~based on medical specialty best practice standards and appropriateness of care;~~] in accordance with the following:

a. [(i)] The prescriber shall call one (1) of the toll-free prior authorization lines and make the request. The fiscal agent shall then notify the dispensing pharmacy of the approval for the exception to the thirty (30) day maximum supply requirement; or

b. [(ii)] ~~"A one (1) month supply shall not be required" shall be handwritten on the prescription and signed by the prescriber.~~ The pharmacist shall call one (1) of the toll-free prior authorization lines and make the request for the exception. [; and]

3. [b:] An approval for a thirty (30) day supply exception shall be applicable for a maximum period of six (6) months [~~if the need for the drug continues and the patient remains eligible.~~

(e) ~~A prescription quantity dispensed which is changed from the original prescription shall be authorized by the prescriber.~~

1. The prescriber shall document in the recipient's medical record the following:

a. The authorized changed quantity amount;

b. The reason for the change;

c. Certification that the pharmacist contacted the prescriber and requested the change;

d. The name of the pharmacist requesting the change; and

e. The date of the authorization.

2. The pharmacist shall document on the prescription or an attached document the following:

a. Authorized changed quantity amount;

b. The reason for the change;



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- c. Certification that the prescriber has been contacted;
  - d. The name of the prescriber or the name of the office employee who transmitted authorization on behalf of the prescriber;
  - e. The date of the authorization;
  - f. The name of the pharmacist; and
  - g. The prescription number.
- (e) [(f)] A recipient, not in a nursing home or personal care facility, or his designee[,] shall sign for receipt of dispensed [his] medication.

Section 3. Prior Authorization [Process]. (1) A medication which requires prior authorization shall be covered if prior authorization is approved pursuant to the procedures established in this section.

(2) If a drug has been prior authorized, it shall be authorized singularly or as a group for a recipient in a nursing facility bed if the recipient [(e)] meets the patient status criteria established in 907 KAR 1:022 unless the commissioner requires [or his designee within the cabinet approves the Drug Management Review Advisory Board's (DMRAB) recommendation to require] individual prior authorization, in accordance with drug class parameters.

(3) Procedure for prior authorization.

(a) A request for prior authorization shall be made by the prescriber, the prescriber's designee, or a pharmacist by [or office personnel under his direct supervision, a pharmacist, or pharmacy personnel under his direct supervision, or social worker. The request shall be made by]:

1. Completing a Prior Authorization Request Form MAP-122 and faxing or mailing the form to the department's fiscal agent[. A written request shall be made for:

- a. A maintenance drug;
- b. An extension;
- c. A change of an existing prior authorization;
- d. A transfer of a prescription to another pharmacy; or
- e. An approval of a drug authorized by the issuance of a medical card for a retroactive period]; or

2. A telephone call to the fiscal agent, Monday through Friday (except holidays). The caller shall provide the information from the form MAP-122.

(b) If other clinically-appropriate drugs are available, a basis for denial of prior authorization shall be failure of the prescriber to provide documentation that:

- 1. Previous drug therapy was unsuccessful;
- 2. A clinically-significant adverse reaction occurred with previous drug therapy;
- 3. A clinical contraindication exists for the use of other drugs available without prior authorization;
- 4. A clinically-significant drug interaction or adverse reaction would reasonably be expected with the use of other drugs available without prior authorization; or
- 5. Use of other drugs available without prior authorization would be clinically ineffective. [Prior to requesting a drug which requires prior authorization:

- 1. A drug not requiring prior authorization shall be prescribed;
- 2. Verbal or written documentation of unsuccessful drug therapy shall be provided; or
- 3. Verbal or written documentation of contraindication for use shall be provided.]

(c) The pharmacy initially selected by a recipient who has been placed in the lock-in program in accordance with 907 KAR 1:677 shall remain the provider during the period of the prior authorization unless the department has determined that a valid reason for a change exists, in accordance with 907 KAR 1:677, Section 2.

(d) The maximum period for which a drug shall be prior authorized shall be six (6) months. Renewal of authorization shall be based on medical necessity. [A request for renewal shall be considered if the need for the drug continues.]

(4) Disposition of a prior authorization request.

(a) The fiscal agent [and its medical personnel] shall review and process each prior authorization request [and approve or disapprove it based on official compendia criteria and Section 2(2) of this administrative regulation].

(b) If form MAP-122 is not completed in its entirety, the request shall be returned for completion.

(c) If the request has been submitted in writing, the provider initi-

ating the request shall be notified of the approval or the denial decision by mail or fax.

(c) [(d)] If the request is made by telephone [has been telephoned in by the pharmacy], the provider shall be notified of the [medication] approval or denial decision [shall be confirmed] at that time.

(d) [(e)] If the medication is to be started within twenty-four (24) hours, based on the date listed on the MAP-122, the pharmacy shall be notified by telephone.

(e) [(f)] If a medication has not been approved pursuant to Section 2(2) of this administrative regulation, the prescriber may request a second review of a denied or pending request by the department. The request for a second review shall include the following:

1. A prescriber shall mail or fax to the department a letter explaining the medical necessity of the denied drug [reasons in support of approval of a denied prior authorization].

2. The department shall review a request based on medical necessity [or its contracted peer review organization;] in accordance with [42-USC-466.71, shall review a request using] official compendia or medical literature.

3. If approved, the department [fiscal agent] shall notify the pharmacy of the approval.

4. If denied, the requestor of the prior authorization and the recipient for whom the prescription was written [prescriber] shall be notified with the reason for the denial.

(f) [(g) Period of coverage:] Unless retroactive coverage is requested, the effective date for coverage of a prior authorized drug shall begin on:

1. The begin date indicated on the MAP-122. If no begin date is indicated on the MAP-122, the effective date shall be:

- a. The date entered on the MAP-122; or
- b. The received date stamped on the MAP-122; or

2. The date a telephone request is received.

(g) [the date the request is postmarked or the date it is received by telephone:] The prior authorization shall remain in effect for an eligible recipient [:

1-:] for the approved period of time unless [;

2-:] until the recipient becomes ineligible; or

3-:] the National Drug Code meets the requirements of [standards established in] Section 2(2)(a) through (d) of this administrative regulation.

(h) Nursing home recipients. Except as provided in subsection (2) of this section, an eligible Medicaid recipient in a nursing facility, meeting Medicaid patient criteria established in 907 KAR 1:022, shall be exempt from the prior authorization process if a form MAP-573 is completed by the facility.

Section 4. Drug Status Review Process for the First Twelve (12) Months. (1) Except as provided by this section or as excluded by Section 2(2) of this administrative regulation, a drug shall be covered for the first twelve (12) months on the market without prior authorization [except as provided by the provisions of this section or as excluded by Section 2(2) of this administrative regulation].

(2) The factors established in subsections (3) and (4) of this section shall be considered by the department in determining whether prior authorization shall be required for a drug during the first twelve (12) months the drug is on the market.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

- (a) A hospitalization;
- (b) An emergency room visit;
- (c) A physician visit; or
- (d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the non-prior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;



3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or another [other] payment system; and

5. A generic drug within the same therapeutic class shall not be compared to a brand name drug. Available utilization data shall be used.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

- a. Significant adverse events that were not previously known; or
- b. Significant morbidity or mortality.

(5) Upon ~~the department's verbal or written~~ request by the department, the manufacturer shall provide ~~the~~ [to the department the requested] following information[;] within ten (10) working days. The manufacturer may provide the requested information on form DMRAB-001:

- (a) Company name;
- (b) Brand product name;
- (c) Generic name;
- (d) FDA approval date;
- (e) Date introduced into United States market;
- (f) American Hospital Formulary Service therapeutic class and code;
- (g) FDA approval class, 1P, 1S, and orphan drugs;
- (h) FDA Approved Drug Products therapeutic equivalence code. A copy of the respective page of the Supplement shall be provided;
- (i) Patent expiration date;
- (j) HCFA rebate drug designation;
- (k) FDA approved indication;
- (l) Side effects or toxicity;
- (m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) Name, address, FAX number, telephone number, and e-mail address of the manufacturer's contact person [requester];

(q) A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program if this drug is made available without prior authorization; and

(r) If available, clinical and pharmacoeconomic study citations.

(6) After the department has determined that a drug shall require a prior authorization:

(a) The department shall notify the manufacturer of the drug, in writing, that the drug shall require prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall require prior authorization; and

(c) The determination of the department shall be presented [reviewed] at the next DMRAB meeting that has been scheduled to meet at least two weeks subsequent to the date of notification to the manufacturer.

(7) Information concerning Kentucky Medicaid's [the] drug prior authorization [status] process shall be placed on the following [in the department agent's] web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug>.

Section 5. Drug Status Review Process After the First Twelve (12) Months. (1) After a drug has been on the market for twelve (12) months, the department may conduct an evaluation due to concerns

regarding cost or safety.

(2) The factors established in subsections (3) and (4) of this section shall be considered in determining whether prior authorization shall be required for a drug after it has been on the market for twelve (12) months.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

- (a) A hospitalization;
- (b) An emergency room visit;
- (c) A physician visit; or
- (d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;

3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or another [other] payment system; and

5. A generic drug shall be compared to a brand name drug to ensure a complete review of the drug class.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with the official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

- a. Significant adverse events that were not previously known; or
- b. Significant morbidity or mortality.

(5) Upon ~~the department's verbal or written~~ request by the department, the manufacturer shall provide ~~to the department~~ the requested information identified in Section 4(5) of this administrative regulation.

~~(6) [(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee established in accordance with KRS 205.5638(2);~~

~~(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item;~~

~~(c) The subcommittee recommendation shall be sent to the DMRAB for review;~~

~~(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial;~~

~~(7) (a) The department may seek additional information from any pertinent source regarding a recommendation made by the DMRAB;~~

~~(b) Once requested [required] information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within [in] thirty (30) calendar days [regarding the acceptance or rejection of the recommendation of the DMRAB];~~

~~(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information];~~

~~(7) [(d)] A copy of the written [notification regarding] final disposition taken by the department shall be:~~

- 1. Forwarded to the:
  - a. Appropriate participating providers;
  - b. DMRAB;
  - c. Manufacturer; and
  - d. Legislative Research Commission to be distributed to appropriate

ate committees; and

2. Posted to the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation [on the Internet].

(8) Information concerning Kentucky Medicaid's [the] drug prior authorization [status] process shall be placed on the following [in the department's agent's] web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

Section 6. Comparable Drug Review. (1) Prescription drugs on the prior-authorized drug file shall be placed on the nonprior-authorized drug file if the comparable drug criteria of subsections (3) and (4) of this section are met.

(2) A comparable drug review shall be performed by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools shall include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(3) Based on review of official compendia and peer-reviewed medical literature, the drug shall:

(a) Be within the same pharmacological category;

(b) Have comparable efficacy;

(c) Have a comparable clinical application; and

(d) Have comparable safety standards and lack the undesirable safety profile specified in Section 4(4)(b) of this administrative regulation;

(4) Based on the average wholesale price, the drug shall have comparable cost determined by a review of:

(a) Cost per day of drug therapy;

(b) A complete period of therapy; and

(c) The diagnosis for which the drug is approved.

(5) A drug removed from prior authorization in accordance with the comparable drug criteria of subsections (3) and (4) of this section shall be placed on prior authorization if the comparable drug subsequently becomes prior authorized in accordance with Sections 4, 5, or 7 of this administrative regulation.

(6) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(5) of this administrative regulation.

(7) If the department determines that a drug shall remain on prior authorization:

(a) The department shall notify the manufacturer of the drug, in writing, that the drug shall remain on prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall remain on prior authorization; and

(c) The determination by the department shall be presented at the next DMRAB meeting for informational purposes.

(8) A copy of the written notification regarding final disposition taken by the department shall be posted to the internet web site specified in Section 4(7) of this administrative regulation.

(9) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

[Twenty-four (24) Month Review. (1) Between July 1998 and July 2000, the department shall conduct a review of current drugs requiring prior authorization. The review shall be conducted in accordance with Section 7(5)(b) of this administrative regulation.

(2) The list of drugs and the calendar quarters in which the drug shall be reviewed shall be as follows:

Fiscal Quarter	Drug Classes
1	Anti-infective Agents
	Cardiovascular Drugs
2	Antidepressants
	Antipsychotic Agents
	Hormone Replacement Agents
	Cephalosporins
3	Macrolides
	Fluoroquinolones
	Antihypertensive Agents
	Diuretics; Potassium-Sparing Diuretics
	Barbiturates
	Benzodiazepines

4	Hydantoins
	Succinimides
	Miscellaneous Anticonvulsants
	Antiarrhythmics
	NSAIDs
5	Nonbenzodiazepine Sedative-Hypnotics
	Penicillins
	Vasodilators
	Opioids
	Lithium
	Skeletal Muscle Relaxants
	Gastrointestinal Agents (Antacids and Antidiarrheals)
	NSAIDs (revisited)
6	Miscellaneous Antibiotics
	Antifungals
	Miscellaneous Analgesics
	Endocrine Agents
	Antineoplastics
	Electrolyte Replacements
	Dental Agents
	Miscellaneous Agents (from classes initiated previously)
7	Enzymes
	Antitussives, Expectorants, Mucolytic Agents
	Eye, Ear, Nose, and Throat Preparations
	Antihistamines
	Serums, Toxoids, and Vaccines
	Miscellaneous Agents (from classes initiated previously)
8	Blood Formation and Coagulation
	Skin and Mucous Membrane Agents
	Vitamins
	Miscellaneous Agents (from classes initiated previously)

(3)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(4)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once additional documented information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department in thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(d) A copy of the written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB; and

c. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the department agent's web site on the Internet.

(5) Information concerning the drug prior authorization status process shall be placed in the department agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

Section 7. Requested Review Process. (1) An interested party requesting a drug status review relating to Medicaid coverage of a specified drug shall submit a request in writing or electronically to the department.

(2) The department shall forward a written acknowledgment of receipt of the status review request and the current drug status to the requester within ten (10) working days of receipt.

(3) Upon ~~the department's verbal or written~~ request by the department, the manufacturer shall provide ~~to the department~~ the requested information identified in Section 4(5) of this administrative regulation.

(4) Upon receipt of the requested information from the manufacturer, the department shall initiate the drug status review. The drug status review shall consist of the following:

(a) A determination of whether the reimbursement is excluded in accordance with Section 2(2) of this administrative regulation;

(b) A determination of whether the drug represents a new strength, dosage form, delivery system, or clinical indication comparable to other drugs listed in the Medicaid drug file ~~[line-extension-not currently requiring prior authorization]~~; and

(c) A determination of whether the drug has:

1. A unique therapeutic indication; or

2. Fewer or less [has demonstrated a] clinically-significant [advantage-involving] adverse side effects or drug interactions. ~~[represents a unique drug, which includes the following:~~

1. Schedule II/controlled substance;

2. Treatment of HIV/AIDS;

3. Orphan drug;

4. Oral birth control medication; or

5. Other drugs identified through product experience by providers, and upon the advice of the DMRAB.]

(5) The department shall determine if a review of a drug product shall be conducted.

(a) A review shall be performed [prepared] by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools **shall** include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(b) A review shall include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;

3. Prominent advantages and disadvantages of the product;

4. A recommendation regarding prior authorization status of a drug;

5. Discussion of applicable studies from the medical literature; and

6. Discussion of applicable pharmacoeconomic studies.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if the subject [it] is directly related to an agenda item.

(c) The Subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850 ~~[61.860]~~, shall be sent to the commissioner of the department for his approval or denial.

(7)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once requested [required] information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within [in] thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the DMRAB ~~[board in light of the new information]~~.

(d) A copy of the written ~~[notification regarding]~~ final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB;

c. Manufacturer; and

d. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation ~~[on the Internet]~~.

(8) Information concerning Kentucky Medicaid's ~~[the]~~ drug prior authorization ~~[status]~~ process shall be placed on the following ~~[in the department agent's] web site at:~~

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

Section 8. DMRAB Open Meeting Procedures. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be placed on the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation at least five (5) [seven (7)] calendar days prior to the meeting.

Section 9. Appeals Involving Placement of Drugs on Prior Authorization ~~[Process]~~. (1) ~~[Prior to the decision of the commissioner, a written exception may be filed with]~~ The commissioner shall enter the final decision on a recommendation of the DMRAB in accordance with KRS 205.5639(3).

(2) An appeal of a final decision by the commissioner by a ~~[pharmaceutical] manufacturer of a product~~ ~~[the decision by the commissioner]~~ shall be ~~[conducted]~~ in accordance with KRS 205.5639(5).

(3) The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received [in hand] by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

(4) The appeal shall be conducted in accordance with KRS Chapter 13B.

Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11. ~~[10:]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MAP-122, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;

(b) Form MAP-573, For Drugs Prior Authorized for Nursing Facility Residents, 10/98 edition, Department for Medicaid Services; and

(c) DMRAB-001, Drug Product Information Form-Kentucky Out-patient Drug List, 4/99 edition, Department for Medicaid Services.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 10 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Physical Health**  
**(As Amended at ARRS, February 13, 2001)**

**907 KAR 3:125. Chiropractic services and reimbursement.**

RELATES TO: KRS 312.015, 312.017 ~~[Chapter 312]~~, 42 CFR 440.230, 441 Subpart B, 42 USC 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050,

## VOLUME 27, NUMBER 9 – MARCH 1, 2001

205.520, 205.560

**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 provisions relating to chiropractic services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

**Section 1. Definitions.** (1) "Chiropractic service" means the diagnosis and the therapeutic adjustment or manipulation of the subluxations of the articulations of the human spine and its adjacent tissues performed by, and within the scope of licensure of, a licensed chiropractor in accordance with KRS 312.015 and 312.017.

(2) "Chiropractor" is defined in KRS 312.015(3).

(3) "Current procedural terminology code" or "CPT code" means the identifying code used by the department for reporting a medical service or procedure.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of a recipient, caregiver, or provider;

(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR 441 Subpart B for eligible recipients under twenty-one (21) years of age.

(6) "Usual and customary charge" means the uniform amount that a medical provider charges to a private-pay patient or third-party payor in the majority of cases for a specific medical procedure or service.

**Section 2. Covered Services.** (1) A covered chiropractic service shall include the following:

(a) An evaluation and management service;

(b) Chiropractic manipulative treatment;

(c) Diagnostic X-rays;

(d) Application of a hot or cold pack to one (1) or more areas;

(e) Application of mechanical traction to one (1) or more areas;

(f) Application of electrical stimulation to one (1) or more areas; and

(g) Application of ultrasound to one (1) or more areas.

(2) Except as specified in Section 3 of this administrative regulation, a medically-necessary chiropractic service shall be covered to the extent, and subject to the service and reimbursement limitations, that the same service is covered by the department for a physician and shall be reported using:

(a) An evaluation and management CPT code;

(b) A chiropractic manipulative treatment CPT code;

(c) A diagnostic X-ray CPT code; or

(d) Physical modality application CPT codes for the following:

1. Application of a hot or cold pack to one (1) or more areas;

2. Application of mechanical traction to one (1) or more areas;

3. Application of electrical stimulation to one (1) or more areas; and

and

4. Application of ultrasound to one (1) or more areas.

(3) Coverage for a chiropractic service shall be based on medical necessity.

**Section 3. Prior Authorization.** (1) Prior authorization from the department shall be required for reimbursement of a covered service, specified in Section 2 of this administrative regulation, provided during a chiropractor-recipient face-to-face contact with the same provider occurring after the initial twelve (12) contacts. If there has been an interval of at least six (6) months since the last chiropractor-recipient face-to-face contact with the same provider, up to twelve (12) additional chiropractor-recipient face-to-face contacts **shall** [may] be reimbursed, if medically necessary, without prior authorization from the department.

(2) **A chiropractor shall request prior authorization by mailing or faxing the following information to the department:**

**(a) A completed Kentucky Form MAP-810, Chiropractic Prior Authorization Form; and**

**(b) If requested by the department, additional information required to establish medical necessity. [Kentucky Form MAP-810; Chiropractic Prior Authorization Form, shall accompany medical documentation required to establish medical necessity.]**

**Section 4. Reimbursement for Covered Services.** (1) A charge for a chiropractic service submitted to the department for payment shall not exceed the usual and customary charge to a private-pay patient or third-party payor for an identical procedure or service.

(2) For reimbursement of a covered service, a chiropractor shall be paid the lesser of the chiropractor's usual and customary actual billed charge or an amount determined in accordance with the physician fee schedule established in 907 KAR 3:010.

**Section 5. Conditions for Provider Participation.** A participating chiropractor shall:

(1) Be licensed as a chiropractor in Kentucky or in the geographic location in which chiropractic services are provided;

(2) Have an active Medicare provider number; and

(3) Meet the requirements for provider participation in the Kentucky Medicaid Program in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:673.

**Section 6. Appeal Rights.** (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

**Section 7. Incorporation by Reference Material.** (1) "Ky. Form MAP-810, Chiropractic Prior Authorization Form, September 26, 2000 edition," is incorporated by reference.

(2) The material may be inspected, copied, or obtained, **subject to applicable copyright law**, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 10 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Mental Health/Mental Retardation Services**  
**Division of Mental Health**  
**(As Amended at ARRS, February 13, 2001)**

**908 KAR 2:070. Standards for rape crisis centers.**

RELATES TO: KRS 147A.050, 210.370, 211.600-211.608 [210.410, 210.450, Acts 1992, c. 462, House Bill 468, Part I, G. Human Resources, 52; Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, p. 1984, Common-

wealth Budget Final Budget Memorandum, FB 92-94, pages 290, 291, 2e]

STATUTORY AUTHORITY: KRS [211.600(1); 211.602(2), 211.608 [210.450, House Bill 468, Part I, G. Human Resources, 52: Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, Commonwealth Budget Final Budget Memorandum, FB 92-94, pages 290, 291, 2e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.602(2) requires that a rape crisis center operate in accordance with administrative regulations promulgated by the Cabinet for Health Services to be eligible to receive state funds and other allocations by the cabinet. KRS 211.608 requires the cabinet to promulgate an administrative regulation that specifies procedures for assuring the confidentiality of rape crisis center clients. KRS 211.600(1) requires the Cabinet for Health Services to designate regional rape crisis centers from each area development district [which shall be eligible for state and federal funds in accordance with an administrative regulation promulgated by the cabinet]. This administrative regulation establishes requirements for rape crisis centers designated by the cabinet. [The Budget Bill and Final Budget Memorandum for Fiscal Biennium 1992-1993 establish the rape crisis centers and appropriate funds for rape victim services program development through the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services. KRS 210.410 and 210.450 require the cabinet to allocate funds to mental health/mental retardation boards, pursuant to approved annual plans and budgets, and by the promulgation of administrative regulations that establish eligibility criteria.]

Section 1. Definitions. (1) ["Advisory committee" means any designated group to whom the governing board may delegate responsibility for recommendation of policy and procedures related to the operation of the rape crisis center. Final approval and accountability shall remain the ultimate responsibility of the governing board.

(2) "Annual plan and budget" means the annual application for funding submitted by each rape crisis center.

(3) "Cabinet" means the Cabinet for Health Services. [Human Resources.

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

(2) [(5)] "Governing board" or "board" means a [the] board that meets the requirements of KRS 211.604. [of directors vested with the legal responsibility for management of affairs of the rape crisis center.

(6) "Primary service provider" means the agency within each region designated by the cabinet as the primary agency to provide rape crisis services.]

(3) "Mental health discipline" means the practice of:

(a) Psychology[, in accordance with KRS Chapter 319];

(b) Social work[, in accordance with KRS 335.080 or 335.100];

(c) Psychiatric nursing[, in accordance with KRS 202A.011(12)(d)];

(d) Marriage and family therapy[, in accordance with KRS 335.300 to 335.399];

(e) Professional counseling[, in accordance with KRS 335.500 to 335.599]; and

(f) Art therapy[, in accordance with KRS 309.130 to 309.1399].

(4) [(7)] "Rape crisis center", or "center", means an organization designated by the cabinet in accordance with KRS 211.604(1), [a program which provides crisis intervention and support services to victims of sexual assault and their family members.]

(5) [(8)] "Region" means an area development district created by KRS 147A.050. [the geographic locality determined by the incorporation of the local mental health/mental retardation board authorized under KRS 210.370 and 210.380 and 908 KAR 2:030, Section 2.]

(6) "Regional MHMR board" means a regional mental health and mental retardation board established in accordance with KRS 210.370.

(7) ["Sanction" means a restrictive or compulsory action, including:

(a) A prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(b) Withholding of relief;

(c) Imposition of a penalty or fine;

(d) Destruction, seizure, or withholding of property;

(e) Assessment of:

1. Monetary damages;

2. Reimbursement;

3. Restitution;

4. Compensation;

5. Costs;

6. Charges; or

7. Fees; or

(f) Revocation, or suspension of a license.

(8) "Secretary" means the secretary of the Cabinet for Health Services.

(8) [(9)] "Victim" means:

(a) A person who has been raped or sexually abused;

(b) A family member of a person who has been raped or sexually abused; or

(c) A friend, or other person associated with, a person who has been raped or sexually abused, and who has been affected by the rape or abuse.

Section 2. Designation and Recision of the Designation of a Rape Crisis Center. (1) An organization which has been funded by the cabinet to provide rape crisis services for the state fiscal year ending June 30, 2000 shall be the designated rape crisis center for the region in which it is located, unless the secretary rescinds the designation in accordance with subsection (2) of this section.

(2) A center's designation is subject to recision if the cabinet [The secretary may rescind the designation of a center if he] determines that:

(a) It failed to submit a plan and budget which substantiates that it has the capacity to provide the services specified in KRS 211.600(3), in accordance with Section 16(1) of this administrative regulation;

(b) Its plan and budget is disapproved; or

(c) It has failed to operate in accordance with a requirement of this administrative regulation[-; or

(d) A sanction has been applied against the center].

(3) The cabinet shall notify a center in writing if the secretary rescinds the designation of the center as a regional rape crisis center. The notification shall:

(a) Specify the effective date of the recision;

(b) Identify the paragraph of subsection (2) of this section upon which the recision is based; and

(4) Inform the center that it may request an administrative hearing, in accordance with Section 17 of this administrative regulation, to dispute the cabinet's decision.

Section 3. Requirements for a Board. (1) [Section 2. Governing Board of Directors. (1) Each center shall be managed by a governing board so as to allow community involvement in the planning, development and evaluation of its services:

(2) Each governing board shall adopt written bylaws, that specify the: [-The bylaws shall include the:]

(a) Purpose of the center [agency];

(b) [Minimum and maximum number of member positions;

(c) Qualifications for board members;

(c) [(d)] Types of members including:

1. Voting; and

2. Ex-officio;

(d) Procedure for selecting a member;

(e) [Method of selecting members;

(f) Terms of board membership [members];

(f) [(g)] Method of filling a vacancy [vacancies];

(g) The name, responsibility [Names, responsibilities], and composition of each committee [committees];

(h) Officers and the duties of officers;

(i) Procedure for [Method of] election of officers [and chairpersons];

(j) An annual meeting date for the election of officers; [and]

(k) Procedure [Procedures] for removing a member; and

(l) Quorum requirements for a board meeting.

(2) [Methods for removal of directors who are excessively absent from board meetings:

(3) The [duties of the] board shall [be to]:

(a) Perform the functions specified in KRS 211.604(2);

(b) Record written [Establish quorum requirements for meetings of

the board:

(b) Schedule meetings of the board to be held a minimum of eight (8) times per fiscal year.

(c) Maintain minutes of each meeting of the board. The minutes shall specify the:

1. (which shall contain the) Date and place of the meeting;
2. The name of each member [Names of members] present;
3. Each matter [Matters] discussed;
4. [the subject matter discussed and] Each action [Actions] taken; and
5. [the] Name of the reporter;

(c) Establish the following [Minutes of each board meeting shall be forwarded to each board member and to the department within thirty (30) days of the meeting:

(d) Create standing committees:

1. Executive;
2. Nominating;
3. Finance;
4. Personnel; and
5. Program planning and evaluation;

(d) Retain minutes of each board meeting for five (5) years; and [of the board to include executive, nominating, finance, personnel, staff development and training, and program planning and evaluation committees. At the discretion of the board, the functions of one (1) or more of these committees may be assumed by one (1) committee.]

(e) Establish written policies and procedures for the center. [restrictions on reimbursement of members of the board including the prohibition against any member contracting with the board to perform personal or professional services.

(4)(a) If the rape crisis center is a program of another entity, the governing board of that entity shall appoint an advisory committee.

(b) A minimum of one (1) member of the board shall be appointed to serve on the advisory committee of the rape crisis center.

(c) The advisory committee shall adhere to the requirements of the board as outlined in this section.]

(3) The written policies and procedures [established in accordance with subsection (2)(e) of this section] shall include:

(a) Procedures which preserve the confidentiality of individual client records in accordance with applicable law [laws and administrative regulations]; and

(b) A requirement that a person who provides a service shall assert[,] and maintain [all] the privileges conferred upon that [the] person by federal and state law [laws and regulations] applicable to:

1. The confidentiality of client records; and
2. The disclosure of personally identifying information about a victim.

(4) A board shall not contract with a member of the board to perform personal or professional services.

Section 4. [3.] Personnel Administration [Management]. (1) A center shall establish a personnel file [shall be maintained by the center] for each employee which shall include: [:

(2) The minimum contents of the personnel file shall include:]

(a) An application for employment;

(b) Documentation that the employee meets the qualifications for the position the employee holds, as [which are] specified in Sections 5(2), (4), and 6 of this administrative regulation; and

(c) [Professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(c) A document containing conditions or terms of employment;

(d) A personnel action form reflecting any change in status of employee, such as salary change, promotion, resignation or termination; and

(e) A position description which specifies the:

1. [including] Title of the position;
2. [description of] Duties of the position; and
3. [and requirements of] Training and experience required [necessary] to qualify for the position.

(2) The board shall establish [(3)] personnel policies which govern [shall be established by the center.

(4) The minimum contents of personnel policies shall include:]

(a) Attendance and leave [policies];

(b) Compensation [plan];

(c) Fringe benefits;

(d) Circumstances which disqualify a person from serving as:

1. An employee;
2. A contractor; or
3. A volunteer;

(e) [Minimum qualifications of a volunteer; [Hiring and firing practices;

(f) Staff development and continuing education provisions;]

(f) Employee grievance procedures;

(f) [(g)] Employee performance evaluations; [and]

(g) [(h)] Equal opportunity employment;

(h) A requirement [(i) Requirements] for [the] submission of documentation by an applicant that [which] demonstrates the qualifications of the [an] applicant;

(i) [(f)] A requirement that an applicant submit documentation of a sanction previously imposed, or pending, against the applicant's license [license] or certification; and

(j) A procedure [(k) Procedures] for verifying an applicant's qualifications.

(3) The policy [policies] required by subsection (2)(d) of this section shall disqualify a person [specified in paragraph (d) of this subsection] from performing a client service, if the person has been:

(a) Convicted of a sex crime defined in KRS 17.165; or

(b) Convicted as a violent offender as defined in KRS 17.165.

(4) A center shall conduct a criminal records check on:

(a) An applicant for a paid or volunteer position that [which] includes a duty to provide services to a victim; and

(b) A prospective contractor, if the contract is to provide services to a victim.

(5) A center shall maintain a list of persons with whom it contracts to provide therapy services.

(6) A [center] contract for performance of a service or [an] administrative function shall provide that the cabinet shall have access to the contractor's facilities, staff, and records, as [which are] necessary for the cabinet to evaluate [determine] the contractor's performance.

(7) If a center contracts for performance of therapy services, the contract shall specify requirements for:

(a) Individual client records;

(b) Documentation of services performed;

(c) Confidentiality of client related information;

(d) Specialized training required of the therapist concerning the treatment of victims;

(e) The fees that may be charged to a client; and

(f) The contractor's disclosure of:

1. Punitive action taken against the contractor by a licensing or certification board, prior to or during the period the contract;

2. A pending complaint that may result in punitive action against the contractor by a licensing or certification board;

3. A conviction of the contractor on a criminal charge;

4. A criminal charge currently pending against the contractor;

5. The result of an adjudicated civil action against a contractor, related to the contractor's professional practice; and

6. A pending civil action against the contractor, related to the contractor's professional practice, that may result in punitive action by a licensing or certification board. [Disclosure by a contractor of a sanction imposed during the period of the contract.]

Section 5. Required personnel. (1) [statements:

(5) The governing board shall employ an administrative director who [one (1) staff person as executive/program director of the rape crisis center. The executive/program director] shall:

(a) Be responsible for financial management of the center[including budgets and grant writing];

(b) Supervise the performance of [duties and activities of] [all] staff and volunteers;

(c) Coordinate the design and delivery of rape and sexual abuse [assault] intervention services;

(d) Fulfill other [all] duties assigned [as required] by the governing board; [and]

(e) Report [directly] [or through supervision] to the board on all center activities; and

(f) Ensure that a provider of a direct client service meets re-



quirements of the professional board with regulating authority for the provider's practice [-and

(f) Be a clinical or administrative director, as determined by the board].

(2) The qualifications of an administrative director shall be: (a) A masters degree from an accredited college or university; or

(b) A bachelors degree from an accredited college or university, and three (3) years of administrative experience.

(3) An administrative director shall, in order to coordinate direct services to clients:

(a) Possess a certificate or license to practice, under the law of the Commonwealth of Kentucky, in a mental health discipline; or

(b) Employ and supervise a person who possesses a certificate or license to practice, under the law of the Commonwealth of Kentucky. [The board shall employ [(6)(a)] a clinical director who:

(a) Shall perform clinical supervision of staff that provide direct client services;

(b) Shall ensure that a person who provides direct client services meets applicable requirements of the professional board which has the authority to regulate the person's practice; and

(c) May provide direct client services;

(4) [shall have the duties and responsibilities established in subsection (5) of this section:

(b) A clinical director shall provide direct client services;

(c) The qualifications of a [requirements for] clinical director shall be:

(a) A [include a:

1. masters degree from an accredited college or university; and

(b) Possession of a certificate or license to practice in a mental health discipline, under the laws of the Commonwealth of Kentucky;

(5) A single individual may serve as an administrative director and a clinical director if the individual meets the requirements of this subsection and subsection (2) of this section.]

(4) [(6)] The board shall employ or contract for personnel to provide the services required by KRS 211.600(3).

Section 6. Qualifications of Service Providers. (1) A person who performs a crisis telephone service shall receive forty (40) hours of training on issues relevant to crisis intervention [services to a victim].

(2) A person who performs a crisis counseling service shall:

(a) Be supervised by a person described in Section 5(3) of this administrative regulation [in counseling or clinical psychology, social work, nursing, or a related field with a counseling or clinical focus; or

2. Bachelors degree in one (1) of the fields specified in this paragraph, with five (5) years of counseling or clinical experience.

(7)(a) An administrative director shall have the duties and responsibilities established in subsection (5) of this section:

(b) An administrative director shall not provide clinical supervision to center staff who provide direct client services;

(c) An administrative director may provide direct service client services if she meets the requirements for a crisis intervention counselor established in subsection (9) of this section:

(d) An administrative director may provide direct client services if center staff who provide direct client services are unavailable.

(e) The requirements for an administrative director shall include a:

1. Masters degree in administration or human services; or

2. Bachelors degree and three (3) years administrative experience;

(8) A center that employs an administrative director shall also employ a client services coordinator who shall:

(a) Provide direct client services;

(b) Provide clinical supervision to center staff who provide direct client services;

(c) Provide program management consultation; and

(d) Meet the educational and experience requirements for a clinical director established in subsection (6) of this section:

(9) A board may establish the staff positions specified in this subsection, if it determines they are required to provide the services established in Section 4 of this administrative regulation:

(a) Crisis intervention counselor. A crisis intervention counselor shall:

1. Provide short-term counseling and advocacy related to the immediate crisis that results from sexual abuse or assault;

2. [Receive clinical supervision by the clinical director];

(b) Client services coordinator; and

3. Have a bachelors degree from an accredited college or university; and

(c) Participate in forty (40) hours of training on rape and sexual abuse [sexual assault] issues, within (3) three months of employment.

(3) Eight (8) hours of the training required by subsection (2)(c) of this section shall occur prior to the performance of a crisis counseling service.

(4) A person who performs a therapy service shall:

(a) Have a certificate or license to practice a mental health discipline under the laws of the Commonwealth of Kentucky;

(b) [in counseling, clinical psychology, social work, a related field, or two (2) years of counseling experience:

(b) Volunteer coordinator. A volunteer coordinator shall provide direct supervision to a person who volunteers to provide services for a center:

(c) Therapist. A therapist shall:

1. Provide psychotherapy that may address recent or past sexual assault; and

2. Have a masters degree in a mental health discipline from an accredited college or university [in a mental health discipline];

(c) Have one (1) year of [in counseling, clinical psychology, social work, a related field with counseling or clinical focus, and three (3) years] counseling or clinical experience; and

(d) Participate in forty (40) hours of training on rape and sexual abuse [sexual assault] issues, within three (3) months of employment.

(5) Eight (8) hours of the training required by subsection (4)(d) of this section shall occur prior to the performance of a therapy [crisis counseling] service.

(6) A person who supervises medical [advocacy] or legal advocacy services shall:

(a) Have a bachelors degree from an accredited college or university;

(b) Participate in forty (40) hours of training on issues related to rape and sexual abuse [sexual assault], within three (3) months of employment; and

(c) Meet the definition of a victim's advocate in KRS 421.570.

(7) Eight (8) hours of the training required by subsection (6)(b) of this section shall occur prior to the performance of a medical or legal advocacy service.

(8) A person who supervises a volunteer shall have:

(a) A high school diploma; and

(b) Five (5) years of volunteer or work experience; and

(c) Participate in forty (40) hours of training on issues related to rape and sexual abuse prior to supervising a volunteer.

(9) A person who performs a volunteer service shall:

(a) Be twenty (20) years of age;

(b) Participate in forty (40) hours of training related to rape and sexual abuse [sexual assault] prior to performing a volunteer service; and

(c) Be qualified in accordance with the requirements of this section which apply to the services that the volunteer is assigned to provide.

(10) A staff member [person] who performs a public education service shall:

(a) Have a bachelors degree from an accredited college or university; and

(b) Participate in forty (40) hours of training on issues related to rape and sexual abuse, within three (3) months of employment.

(11) Eight (8) hours of the training required by subsection (10)(b) of this section shall occur prior to the performance of a public education service.

(12) [(d)] The qualifications specified in subsections (1) through (11) of this section [established in paragraphs (a) through (e) of this subsection] shall not apply to an employee [center staff] hired or a contractor engaged prior to the effective date of this administrative regulation if the employee or contractor meets the requirements that were in effect at the time the employee was hired or the contractor was engaged.

(13) A person who provides client services shall participate in at least eight (8) hours of continuing education annually.



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~~(e) Within three (3) months of employment, a crisis intervention counselor, a volunteer coordinator, and a therapist shall have received forty (40) hours of training on issues related to sexual assault.~~

~~(f) A staff member shall receive at least ten (10) hours of the training required by paragraph (e) of this subsection before providing services to clients.~~

~~(g) Prior to serving as a volunteer, a person shall have received forty (40) hours of training related to sexual abuse and assault.~~

Section 7. Requirements for Crisis Services. ~~[4. Services.]~~ (1) A rape crisis center shall assure that the following crisis services are available to a victim ~~[victims]~~ twenty-four (24) hours a day, seven (7) days a week:

(a) A toll-free [:

~~(a) Provide the services specified in subsections (2) through (5) of this section; or~~

~~(b) Refer clients to a provider of these services;~~

~~(2) Crisis intervention services. Crisis intervention services shall:~~

~~(a) Be immediately available to victims of sexual abuse and assault twenty-four (24) hours a day; and~~

~~(b) Include the following:~~

~~1. A crisis telephone service to include:~~

~~1. A text telephone capacity; or~~

~~2. Equivalent assistive technology for the deaf and hard of hearing. [line with a TTY feature; and]~~

~~(b) [;~~

~~2.] Crisis counseling services; and~~

~~3. Accompaniment to medical or legal services related to the abuse or assault.]~~

~~(2) A victim who calls the crisis telephone service shall not be required to identify himself or herself.~~

~~(3) A center shall establish policies and procedures for the operation of the crisis telephone service, as required by subsection (1)(a) of this section that [which] specify conditions under which an employee or volunteer who answers a crisis call shall contact a supervisor.~~

~~(4) The policies and procedures [required by subsection (3) of this section] shall require that a supervisor be contacted if:~~

~~(a) A caller seems to present a danger to self or others;~~

~~(b) A caller is in danger; or~~

~~(c) The intervention of [Contact with] law enforcement may be appropriate.~~

~~(5) A person who responds to a crisis telephone call outside the center's regular business hours shall inform supervisory staff by [the center no later than] the close of business on the following business day.~~

~~(6) A call that alleges or provides evidence of abuse, neglect, or exploitation shall be reported in accordance with:~~

~~(a) KRS 620.030, if applicable; or~~

~~(b) KRS 209.030, if applicable.~~

~~(7) The center shall document each crisis telephone call in a log. Documentation shall include:~~

~~(a) The time, date, and purpose of the call;~~

~~(b) The name of the caller if [voluntarily] given voluntarily;~~

~~(c) A referral made as a result of the call, if any; and~~

~~(d) Other action recommended by the employee or volunteer who answered the call, if any.~~

~~(8) Face-to-face crisis counseling services shall be available during the regular business hours of the center and, at other hours, by appointment.~~

~~(9) A center shall not charge a recipient of crisis counseling services for three (3) or fewer visits.~~

~~(10) [A center may charge a fee to a client for crisis counseling services except as prohibited by subsection (9) of this section.]~~

~~(11) If a client needs or requests a service [services] in addition to the counseling visits provided at no cost, in accordance with subsection (9) of this section, the center shall:~~

~~(a) Provide the service [needed or requested services]; or~~

~~(b) Refer the client to another practitioner who, or agency which, provides the service [needed or requested services].~~

~~[(12) Crisis counseling services shall include accompaniment to medical or legal services related to abuse or assault if requested by the victim.]~~

Section 8. Requirements for Mental Health and Related Support Services. (1) Mental health and related support services shall include:

(a) Therapy;

(b) Information; and

(c) Referral services.

(2) Therapy may include:

(a) Individual psychotherapy;

(b) Family psychotherapy;

(c) Group psychotherapy; and

(d) Medication management.

(3) Therapy shall be available during regular business hours of the center.

~~(4) [The center may charge a reasonable fee for therapy.]~~

~~(5) A center shall maintain a record of current information about financial, medical, mental health, social services, and other resources for the referral of a victim.~~

Section 9. Requirements for Advocacy Services. (1) Advocacy services shall include **both** legal ~~[advocacy services]~~ and medical advocacy services.

(2) Advocacy services shall be available twenty-four (24) hours a day, seven (7) days a week, at no cost to a victim.

(3) Advocacy services ~~[which are]~~ provided outside regular business hours shall be documented ~~by [no later than]~~ the close of business ~~on [;]~~ the following business day.

(4) The center shall establish a protocol for advocacy services, ~~listing [that lists]~~ the conditions under which a person who provides advocacy services shall contact a supervisor.

(5) Legal advocacy services shall include:

(a) **Accompanying** ~~[Accompaniment of]~~ a victim to a court proceeding or a meeting with law enforcement or a criminal justice agency; and

(b) **Educating** ~~[The provision of education to]~~ a victim regarding:

1. How the legal system operates; and

2. The Victims Bill of Rights specified in KRS 421.500 to 421.575.

(6) Legal advocacy services shall be limited to support and education, and shall not include offering legal advice or otherwise engaging in the practice of law, unless the service is provided by a licensed attorney;

(7) Medical advocacy services shall include:

(a) **Accompanying** ~~[Accompaniment of]~~ a victim to a forensic rape examination or other medical care necessitated by the **rape and sexual abuse** ~~[sexual assault]~~; and

(b) **Educating** ~~[Education to]~~ a victim regarding how the health care system operates.

Section 10. Requirements for Consultation Services. (1) Consultation services shall include **discussion**:

(a) ~~[Consultation]~~ Related to a victim; and

(b) ~~[Consultation]~~ About the design of a program to assist a victim.

(2) Consultation on behalf of a victim shall be:

(a) Available twenty-four (24) hours a day, seven (7) days a week at no cost; and

(b) Provided under conditions that protect the **[a]** victim's confidentiality.

(3) The center shall obtain written permission for release of information from the victim prior to disclosure of personally identifying information.

Section 11. Requirements for Public Education Services. (1) Public education services shall include:

(a) Prevention;

(b) Risk reduction;

(c) General information;

(d) Training programs regarding rape, ~~[or]~~ sexual abuse, or related issues for schools, community groups, or professionals; and

(e) Development or distribution of written materials which provide information on:

1. Rape and sexual abuse; and

2. How to contact the center for services.

(2) Public education materials shall be prepared for an audience that is diverse in religion, race, disability, culture, and sexual orientation.

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(3) A center shall evaluate its public education programs using information from education program participants.

Section 12. [(3) Support services:

(a) Support services shall be available to assist victims of sexual abuse and assault to recover:

(b) Support services shall include:

1. Legal and medical advocacy;
2. Information and referral;
3. Case management;
4. Family support; and
5. Support group services.

(4) Consultation and education services:

(a) Consultation and education services shall be available to:

1. Increase community awareness of sexual abuse and assault; and

2. Improve the ability of professionals to provide services to persons who have been sexually abused and assaulted:

(b) Consultation and education services may include:

1. School-based prevention programs;
2. Community education programs;
3. Media presentations;
4. In-service training; and
5. Case consultation services.

(5) Clinical services. Clinical services related to the mental health needs of victims of sexual abuse and assault shall:

(a) Be provided by professionals who meet the requirements of the therapist position established in Section 3(9)(c) of this administrative regulation; and

(b) Include individual, couple, family, and group therapy services:

(6) Volunteer Program. [network:] A rape crisis center shall maintain a roster of volunteers who may [an active volunteer network to] assist with the provision of:

(1) A direct service to a victim of rape or [services to victims of] sexual abuse [and assault]; and

(2) Administrative [indirect] services for the center.

Section 13. [(7) Client Files. (1) A center shall document each service provided, to include:

[(2) The documentation required by subsection (1) of this section shall include:]

- (a) The date the [a] service is performed;
- (b) The recipient of the service;
- (c) The type of service; and
- (d) The name and title of the service provider.

(2) [(3)] [(a)] A rape crisis center shall establish a [open a client] file for each victim [of sexual abuse and assault] who is provided a therapy service. The [excluding service that is limited to a telephone conversation:

(b) A client] file shall include:

(a) [1:] A current service plan that identifies [details] the services needed by the victim; and

(b) [2:] A statement of the goals for intervention.

(3) [(4)] [(c)] A client file shall be confidential, except as otherwise provided by [applicable] law.

Section 14. [(8) Client Satisfaction and Grievances. (1) A rape crisis center shall establish a written grievance procedure that shall:

(a) Be given to each client who [that] comes to the center for a service [services]; [and]

(b) Contain a description of the[  
1:] services provided by the center; and

(c) Specify the [2:] procedure for filing a client grievance.

(2) A center shall[annually:] evaluate, annually, the level of client satisfaction with its services, using information provided by clients.

Section 15 Monitoring. (1) The cabinet may monitor and review programs [conduct program reviews] related to:

(a) The quality of a center's services;

(b) Compliance with the requirements of this administrative regulation;

(c) Implementation of a center's approved plan and budget[; and

(d) A sanction previously imposed; if any].

(2) Monitoring may include:

(a) Review of client records;

(b) Review of a report submitted to the cabinet;

(c) On-site visit for technical assistance or consultation;

(d) Interviews with the following persons[if they agree to participate in an interview]:

1. A center employee;

2. A contract service provider;

3. A volunteer; or

4. A victim if they agree to participate in an interview; and

(e) Investigation of a problem or complaint.

(3) A rape crisis center, and a subcontractor of a rape crisis center, shall grant the cabinet reasonable access to its facilities, staff, and records.

(4) The cabinet, in its monitoring and review in accordance with subsection (1) of this section, shall preserve the confidentiality of a client record in accordance with [Kentucky Rules of Evidence (KRE) 506, and 507, 902 KAR 20:091, Section 3(4)(c);] KRS 214.185, and 194A.060, 902 KAR 20:091, Section 3(4)(c).

Section 16. [5:] Funding. (1) An entity [A center which is] designated as a regional rape crisis center [in accordance with Section 2 of this administrative regulation] shall submit the [The Primary Service Provider shall be the regional mental health/mental retardation board; unless the provision of services for victims of sexual abuse and assault has been contracted by the board to a nonprofit agency that has been approved by the cabinet:

(2) The agency designated as the primary service provider shall remain the primary service provider, unless its designation has been rescinded by the department after a review by the department of the agency's:

(a) Performance; or

(b) Annual plan and budget proposal for funding for the next fiscal year.

(3) A primary service provider shall submit an annual plan and budget proposal on "Funding Application for Rape Crisis Centers and Rape Victim Services Programs" no later than ninety (90) days prior to the beginning of the period for which funds are requested.

(2) A center shall be eligible to receive state funds and other allocations from the cabinet upon the secretary's approval of a funding application submitted in accordance with subsection (1) of this section.

Section 17. Administrative Hearing Procedure. (1) A request for an administrative hearing shall be received by the cabinet no later than thirty (30) days after the date of the notice required by Section 2(3) of this administrative regulation. The request shall:

(a) Identify the disputed decision; and

(b) State the basis on which the secretary's decision is believed to be unwarranted or erroneous.

(2) An administrative hearing shall be conducted by a hearing officer [who is] knowledgeable of cabinet policy.

(3) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(4) A request for a hearing shall be considered [to be] abandoned[;] if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled.

(5) A center may withdraw a request for an administrative hearing by:

(a) Notifying the hearing officer, in writing, that the center wishes to withdraw the request; or

(b) Stating on the record, at the hearing, that the center withdraws the request.

Section 18. Material Incorporated by Reference. (1) [The] [form:

(4)(a)] "Funding Application for Rape Crisis Centers and Rape Victim Services Programs (July 1993)" form is incorporated by reference.

(2) This material [(b)-(t)] may be obtained, inspected, or copied, subject to applicable copyright law, at the Division of Mental Health, Department for Mental Health and Mental Retardation Services, Cabinet for Human Resources, Leestown Square, 4th Floor, Fair Oaks Lane, Frankfort, Kentucky 40601, 8 a.m. to [through 4:30 p.m., Monday to Friday.

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~~[Section 6. Audit and Monitoring. (1) The department, and a regional mental health/mental retardation board that has contracted with a rape crisis center, shall audit, monitor and conduct program reviews related to the quality of care provided by a rape crisis center.~~

~~(2) In order to perform the duties imposed by subsection (1) of this section, a rape crisis center shall grant reasonable access to its property and records.]~~

MARGARET PENNINGTON, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 11 a.m.

**PART 2**  
**OF THE**  
**MARCH 1, 2001**  
**ADMINISTRATIVE REGISTER**

**Due to the size of the March 1, 2001, Administrative Register, it could not be stapled as one document, but is included in two separate stapled documents. This section is Part 2 of the March 1, 2001 Administrative Register.**



ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY REAL ESTATE COMMISSION  
(Amended After Hearing)

201 KAR 11:250. Listing and purchase contracts - provisions required.

RELATES TO: KRS 324.160(4)(w) [324.281(5), 324.282]

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards for listing and purchase contracts. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. Listing contracts shall include the:

- (1) Listing price of the property, unless the sale is to be by auction;
- (2) Date and time of the signing of the listing contract for all parties who sign;
- (3) Date and time of expiration of the listing contract;
- (4) Fee or compensation [commission] agreed upon;
- (5) Street, address or location of the real estate listed for sale;
- (6) Signatures of all owners; [and]
- (7) Special directions of the owner concerning limitations on showings and subagency restrictions; and
- (8) Date and time for initialing of all changes on the document.

Section 2. An offer to purchase and a counteroffer prepared by or at the direction of a licensed agent shall include the:

- (1) Purchase price, the amount of contract deposit given and who is to hold the deposit;
- (2) Date and time of signing of the offer or counteroffer for all parties who sign;
- (3) Date and time when the offer or counteroffer expires;
- (4) Street, address or a general description of the real estate sufficient to identify the parcel;
- (5) Names of the offering party and the agent who prepared the offer or counteroffer; and
- (6) Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3. (1) If a party or his or her representative presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing executory contract by inserting the following provision in the offer: "This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer". [No specific language is mandated however, "this offer is a back-up offer" meets the requirements of this section.] [A licensed agent shall insert the following provision in a contract made after an executory contract of sale of real estate that has not lapsed according to its terms: "This contract is contingent upon the nonperformance of a contract of sale, and any signed extension, in which (insert names of purchasers) have agreed to purchase the real estate that is the subject of this contract."]

(2) The provision required in subsection (1) of this section shall be:

- (a) Inserted by the licensee [agent] who prepares the offer to purchase, if he is aware of the existing contract; and
- (b) Made by the listing licensee [agent] as a counteroffer.

RON K. SMITH, Chairperson

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: February 1, 2001 at 1 p.m.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides minimum information that must be included in listing and purchase contracts prepared by licensees.

(b) The necessity of this administrative regulation: This information makes clear what real property is offered and under what conditions the real property is available. Information addresses problematic issues for licensees and consumers through experience of Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Much of the information required in this regulation is necessary to create a valid contract. Therefore, it imposes no burden on licensees involved. By mandating the information in this regulation licensees and consumers do not encounter situations where each thought a property was available or transferred but in reality neither occurred.

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

(a) How the amendment will change this existing administrative regulation: Amendment requires "time" of signing be added for all signatories parties on a real estate listing contract; changes term "commission" to term "compensation"; requires all changes on the listing contract include "date and time" for initialing; amends "back-up offer" language; changes term "agent" to "licensee".

(b) The necessity of the amendment to this administrative regulation: Industry members, Real Estate Commission, and attorneys who work regularly with real estate licensees in real estate closings and other capacities have indicated information about "time of signing" for listing contracts and "date and time of initialing changes" is needed since disputes have frequently arisen as to when a listing contract began and when a contract was amended. Real estate offers and acceptances often occur very rapidly and information as to the precise time of various amendments can be important to determining the rights of all parties; Licensees are paid in forms other than "commissions" and therefore "compensation" should be substituted; the current "back-up" offer language is incomprehensible to most licensees therefore a simplification or use of "every-day language" is desired substituted.

(c) How the amendment conforms to the content of the authorizing statutes: Amendments to regulation add items which eliminate confusion and therefore comply with KRS Chapter 13A and 324.281 (5); and use of "every-day language" is specifically mandated by KRS Chapter 13A and therefore the current language should be amended.

(d) How the amendment will assist in the effective administration of the statutes: As indicated in (2)(a) above, numerous problems have arisen when a contract contained no time for signing and contained a date only. The amendments will provide precision with regard to when a contract was created or amended thereby eliminating confusion when, for example, a listing contract is signed on "October 1, 2001" at 8 a.m. and a prospective buyer makes an offer at 1 p.m. on "October 1, 2001." Without including the time on the listing contract, it is impossible to determine from the face of the document whether a listing contract was effective when an offer was submitted. This will eliminate questions about appropriateness of compensation and whether the real estate was subject to a listing contract when the offer was submitted; "compensation" is an exhaustive, inclusive description of licensee payment while "commission" only addresses one method of payment; the current "back-up" offer language is, according to licensees and educators, not in the day-to-day language of the real estate in-

dustry nor is it understood by licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Amendment will affect all real estate licensees.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: As indicated in Section 2 above, numerous instances have occurred where confusion exists about the timing of a listing contract's effective date and these amendments will address those circumstances; the term "compensation" addresses all licensee remuneration not simply "commission" payments; the new "back-up offer" language should be more understandable for licensees.

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

(a) Initially: It is estimated the amendments will have an initial cost to some licensees. Many real estate companies purchase "form" listing contracts in bulk. This change will require companies to print and purchase new "form" listing contracts and may result in some "old" form contracts not being utilized and therefore a cost incurred. The Real Estate Commission has notified industry representatives of this situation. As this amendment would not become effective until 2001, it is believed that companies can estimate the number of "forms" needed and purchase accordingly. It is estimated that most companies will be able to limit the cost incurred by appropriate planning and purchasing efforts.

(b) On a continuing basis: No further cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding provided.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish or increase any fees directly or indirectly but may result in some cost as indicated in (5) above.

(9) TIERING: Is tiering applied? Tiering is not utilized as there is no disproportionate impact on any class and all contribute significantly to the problem addressed by the amendments. There is no reasonable criteria to distinguish between any class.

# KENTUCKY REAL ESTATE COMMISSION (Amended After Hearing)

## 201 KAR 11:350. Seller's disclosure of conditions form.

RELATES TO: KRS 324.360

STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 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:

### "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
3. A court supervised foreclosure.

#### PROPERTY ADDRESS:

PURPOSE OF STATEMENT: Completion of this form shall satisfy the requirements of KRS 324.360 which mandates the seller's disclosure of 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 by the seller or seller's agent and shall not be intended as a substitute for an 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, if necessary, with your signature and date and time of signing (if necessary). (4) Complete this form yourself unless the applicable provision regarding licensee completion is utilized. (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. 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 person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are not the representations of the agent.

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.)			



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(h) Have you experienced, or are you aware of, any water or drainage problems with regard to the crawl space?			
<b>3. ROOF</b>			
(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.)			
<b>4. LAND/DRAINAGE</b>			
(a) Any soil stability problems?			
(b) Has the property ever 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:			
<b>5. BOUNDARIES</b>			
(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:			
<b>6. WATER</b>			
(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:			
<b>7. SEWER SYSTEM</b>			
(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:			
<b>8. CONSTRUCTION/REMODELING</b>			
(a) Have there been any additions, structural modifications, or other alterations made?			
(b) Were all necessary permits and government approvals obtained?			
Explain:			
<b>9. HOMEOWNER'S ASSOCIATION</b>			
(a) 1. Is the property subject to rules or regulations of a 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:			
<b>10. MISCELLANEOUS</b>			
(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 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?			
(n) Has this house ever been damaged by fire or other disaster (i.e., tornado, hail, etc.)? If yes, please explain:			

SPACE FOR ADDITIONAL INFORMATION:

The seller has owned this 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.

Seller:

Date:

Seller:

Date:

THE LICENSEE NAMED HERE (NAME) HAS BEEN REQUESTED BY THE OWNER TO COMPLETE THIS FORM AND HAS DONE SO. I HEREBY AGREE TO HOLD HARMLESS THE NAMED LICENSEE FOR ANY REPRESENTATION THAT APPEAR ON THIS FORM.

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES 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."

RON K. SMITH, Chairperson

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: February 1, 2001 at 1 p.m.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides a Sellers Disclosure of Property Conditions Form.

(b) The necessity of this administrative regulation: KRS 324.360 mandates this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.360 mandates this regulation. This regulation conforms to the statutory mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation meets mandate of legislature.

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

(a) How the amendment will change this existing administrative regulation: HB 677 (enacted) mandated the Real Estate Commission amend the form to allow licensee completion of the form if a seller requests and exclude the form for new homes when warranty is offered. The old law required a "written" warranty; the "time" of signing for seller is added. Industry members requested additional question be added to the form regarding fires and other disasters (tornado, hail, etc) and crawl space leakage.

(b) The necessity of the amendment to this administrative regulation: HB 677 (enacted) mandated the "licensee completion" section and the deletion of "written" warranty requirement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.360 authorizes the Real Estate Commission to create the form established by this regulation. Changes to KRS 324.360 by the enactment of HB 677 mandate two of the amendments.

(d) How the amendment will assist in the effective administration of the statutes: By virtue of KRS 324.360, the Real Estate Commission must create this form. These amendments are in accordance with that

authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who market residential single-family homes must utilize the form.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: KRS 324.360 was amended to allow licensees to complete the form if the seller so requests and signs a disclaimer about the licensee's representations. Licensees may now complete the form. The additional property information included in the form should provide more information to consumers about property they are considering purchasing.

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

(a) Initially: It is estimated no cost will exist to implement the amendment.

(b) On a continuing basis: No cost is estimated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement the amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is applied as this regulation applies only to licenses who market single family residential homes. By virtue of statute, many licensees who engage in sales of commercial property or who perform property management do not contribute significantly to the problem this regulation is designed to address and are therefore excluded. Other tiering occurs by virtue of the exclusions for new homes for which a written warranty is offered, auction sales, and court supervised foreclosures. These exclusions further narrow the scope of 201 KAR 11:350.

KENTUCKY REAL ESTATE COMMISSION  
(Amended After Hearing)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(4)(e), (n) [(t)(e)]

STATUTORY AUTHORITY: KRS 324.281(5), [324.160(1)(e), (f);] 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(1)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing the relationship between a broker or sales associate, seller, and buyer in a residential transaction to: (1) ensure that each party knows what relationship exists between the parties; and (2) have documented evidence that the disclosure occurred.

Section 1. Definitions. (1) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.

(2) "Delivery" means delivery of an item to a party or prospective party [or his broker or sales associate] by:

(a) Mail;

(b) FAX transmission;

(c) Electronic mail;

(d) Messenger; or

(e) [(d)] Hand.

(3) ["First contact" means the period:

(a) ~~Before a contract containing a duty of representation and compensation is entered into by a:~~

~~1. Prospective party who does not have a broker or sales associ-~~

ate; and

2. A broker or sales associate who has offered to represent him; or

(b) Before the beginning of discussions relating to a real estate transaction between a:

1. Prospective party who does not have a broker or sales associate; and

2. A broker or sales associate who has proposed to discuss the real estate transaction with him;

(4) "First substantial contact" means the period between the first contact and the period immediately preceding the presentation of a written offer to purchase;

(5) "Prospective party" means a person who:

(a) Enters a listing contract as a seller;

(b) Enters a buyer-broker agreement as a buyer; or

(c) Seeks or uses the services of a broker or sales associate;

(6) "Prospective party" means:

(a) A person;

(b) Who has contact with a licensee [relative to a contemplated real estate transaction]; and

(c) Who has not entered into a brokerage agreement with a licensee relative to the contemplated transaction.

(4) "Party" means one represented by a real estate licensee;

(5) "Contact" means discussion or correspondence between a licensee and an identified prospective party involving the licensee's services related to a mutually-contemplated real estate transaction.

(6) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(7) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.

(8) "Business relationship" means arrangement whereby the licensee and party have a mutual ongoing economic interest other than the specific real estate transaction subject to the disclosure.

(9) "Confidential information" means information that would materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party. [who is represented by a broker or sales associate" means a person who has entered into a current listing contract, or buyer-broker agreement with a broker or sales associate.]

Section 2. The provisions of this administrative regulation shall not apply to a:

(1) Sale of real estate at auction;

(2) Property management of real estate; or

(3) Commercial transaction.

Section 3. Prospective Party Information. (1) A licensee shall complete items 1-3 of [deliver a completed] "Section A" of the Agency Information and Disclosure Form to a prospective party prior to:

(a) Receiving confidential information from a prospective party relative to a mutually-contemplated real estate transaction;

(b) Entering a representation agreement or submitting an offer to, or on behalf of, a prospective party;

(c) No later than the conclusion of the second contact between the licensee and a prospective party.

(2) The Agency Information and Disclosure Form shall provide:

(a) Relationships available between the licensee and prospective party in Kentucky;

(b) The specific relationship proposed between the licensee and prospective party;

(c) Name of licensee completing the form, name of principal broker of the licensee, and name of licensee's real estate company;

(d) Name of prospective party;

(e) [Signature and date of signing of licensee;

(f) Signature and date of signing of prospective party;

(3) The licensee shall complete "Section B" of the "Agency Information and Disclosure Form" if dual agency is being offered to the party. If dual agency is being offered, the completed "Section B" shall be delivered to the party prior to an offer being submitted [the creation of the dual agency]. "Section B" shall provide:

(a) The name of the other party represented in the transaction by

the licensee;

(b) The address of the property that is the subject of the transaction;

(c) Indication whether licensee is acting as a party to the transaction, has any financial interest in the property that is the subject of the transaction, or anticipate having [may have] any financial interest in the property that is subject to the transaction [any transaction in which the consumer is involved];

(d) Whether any licensee(s) acting as a dual agent has a personal, family, or business relationship with the other represented party to the dual agency; and

(e) An explanation, by the licensee(s) serving in a dual agency capacity, of the personal, family, or business relationship with the other represented party;

(f) Signature and signature date of [signing of] licensee; and

(g) [(e)] Signature and signature date of party's consent to dual agency [signing of party].

(4) "Agency Information and Disclosure Form" required by subsection (1) of this section shall be "The Agency Information and Disclosure Form" approved by the Kentucky Real Estate Commission.

(5) [A broker or sales associate shall deliver to a prospective party an Agency Information Bulletin on the first contact. The Agency Information Bulletin shall:

(a) Be prepared by the broker or sales associate; and

(b) Generally summarize the possible relationships that may exist between the broker or sales associate, and the buyer and seller.

(2) A broker or sales associate shall deliver to a prospective party an "Agency Disclosure Form" on the first substantial contact. The "Agency Disclosure Form" shall:

(a) Be signed by each:

1. Prospective party to the transaction; and

2. Broker or sales associate involved in the transaction; and

(b) Identify:

1. Each prospective party known to the broker or sales associate making the disclosure;

2. If a prospective party is represented by a broker or sales associate, the name of the broker or sales associate, his real estate company, and whom he represents; and

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

1. The broker or sales associate making the disclosure; and

2. Each prospective party known to the broker or sales associate when the disclosure is made;

(d) State whether the broker or sales associate making the disclosure is acting as a principal as a prospective:

1. Seller;

2. Buyer;

3. Lender; or

4. Investor;

(e) Contain a statement that:

1. An agent owes a fiduciary duty to his client, including:

a. A duty of loyalty;

b. Giving the client all the information the agent knows about the property;

c. Honesty and fair dealing; and

d. Negotiating in the best interests of his client;

2. An agent owes a duty of honesty and fair dealing to his customer; and

3. The payment of a fee to an agent shall not create a fiduciary duty to the person paying the fee; and

(f) Indicate whether the listing or selling licensee is acting as a designated agent.

(3) The "Agency Disclosure Form" and the "Agency Information For Consumers Bulletin" required by subsection (1) of this section shall be:

(a) The "Agency Disclosure Form Approved By Kentucky Real Estate Commission"; and the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; or

(b) An Agency Disclosure Form, and Agency Information For Consumers Bulletin, that have been developed by the broker or sales associate and approved by the commission.

(4) (a) An "Agency Information and Disclosure Form" that has

been developed by the broker or sales associate shall be submitted to the commission for approval.

(b) The general counsel of the commission shall:

1. Review the form;
2. Make a recommendation to the commission that the form be approved or disapproved; and
3. Inform the broker or sales associate of the commission's decision.

Section 4. ~~[Commission Review of Licensee Documents. The commission shall:~~

~~(1) Review a licensee listing agreement, buyer-broker agreement, or purchase agreement;~~

~~(2) Approve an agreement that it determines contains the information required by this administrative regulation; and~~

~~(3) Inform the broker or sales associate of the commission's action.~~

Section 5. ~~Incorporation By Reference. (1) The following material is incorporated by reference: [(a)] "Agency Information and Disclosure Form" (February, 2001) [(August, 2000)]. [Approved By Kentucky Real Estate Commission (November 19, 1998)"; and~~

~~(b) "Agency Information for Consumers Bulletin Approved by Kentucky Real Estate Commission (1999)";]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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.

RON K. SMITH, Chairperson

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: February 1, 2001 at 1 p.m.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for disclosure of who licensee represents in a real estate transaction.

(b) The necessity of this administrative regulation: Agency disclosure regulations began appearing in the United States in the mid 1990's. Studies at the time indicated consumers greatly misunderstood who real estate agents represented in real estate transactions. Since 1996, Kentucky's agency disclosure regulation has provided consumers specific documentation as to who real estate licensees represent in a transaction. The regulation has effectively addressed issues regarding agency and representations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: (KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation has effectively addressed issues of nondisclosure of representation since 1996. Changes are needed as indicated in the amendment summary below. However, the regulation concept still serves the initial need.

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

(a) How the amendment will change this existing administrative regulation: Amendment allows delivery of the form by electronic mail; provides specific definitions of individuals subject to the regulation; provides specific completion requirements for the form; amends current forms of "Consumer Information Bulletin" and "Agency Disclosure Form" into one "Agency Information and Disclosure Form".

(b) The necessity of the amendment to this administrative regulation: This amendment is designed to improve the current regulation. Similar regulations were enacted in the mid 1990's (Kentucky-January 1996) throughout the country. After 4 1/2 years, several problems exist

with the current regulation including: the reluctance of consumers to sign receipt of a consumer bulletin "on first contact" (current regulation). The amendment does not require the licensee to deliver any document to a consumer on first contact. Many licensees feel that consumers are currently "lost in paperwork" due to the 2 required forms under the current law. The amendment incorporates the 2 forms into 1. Another issue (that exists) with the current form is the "agency disclosure form" does not need to be delivered until any time prior to the offer being submitted. If a licensee is engaging in dual agency prior to this time and an informed dual agency consent has not been obtained, the licensee may have engaged in an undisclosed dual agency. Therefore, the amendment provides a "consent to dual agency" in response to industry requests and a need.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes prohibit undisclosed dual agency and authorize the Real Estate Commission to promulgate regulations to carry out this objective.

(d) How the amendment will assist in the effective administration of the statutes: As indicated in (2)(b) above, the initial regulation was enacted in 1996. At that time, no regulatory agencies had significant experience with agency disclosure regulations and therefore, a model which addressed all the problems associated with agency and real estate brokerage. These amendments are offered after four years of implementation of the original regulation and are based on the experience of licensees and the Real Estate Commission. The issue "agency" issue is the most difficult regulatory issue for the Real Estate Commission and these amendments address the concerns of licensees and the Real Estate Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who perform residential real estate brokerage are affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendments are offered to address several concerns raised by licensees. It is anticipated the amendments will address these concerns.

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

(a) Initially: The only cost that may exist would be if companies printed forms in bulk and had excess forms if the regulation is amended. The Real Estate Commission has informed industry groups of the proposed amendment to put their members on notice to purchase forms that will cover the time until an amendment occurs.

(b) On a continuing basis: There may be cost for continued printing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement or enforce the administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is applied as this regulation applies only to residential sales of real estate. Commercial transactions are excluded as they do not contribute significantly to the problem the regulation is designed to address. Property management activity and auction sales are also excluded as this activity does not contribute significantly to the problem the regulation is designed to address. Tiering is further utilized by the amendment which limits the form's requirements to one who has not entered into a brokerage agreement with a licensee relative to a contemplated transaction. This avoids regulating transactions which do not contribute significantly to the problem which the regulation was designed to address.

KENTUCKY REAL ESTATE COMMISSION  
(Amended After Hearing)

201 KAR 11:420. Standards for internet advertising.

RELATES TO: KRS 324.117(6)

STATUTORY AUTHORITY: KRS 324.117(6), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.117(6) requires the Real Estate Commission to establish an administrative regulation to define the manner in which licensees may utilize any internet electronic communication for advertising or marketing. This administrative regulation establishes internet standards.

Section 1. A real estate company's Internet home page shall include the following information:

(1) The company's full, nonabbreviated name as recorded with the Kentucky Real Estate Commission or the name of the real estate company's principal broker;

(2) A statement indicating the [The name of the real estate company's principal broker;

(3) Each jurisdiction where the company holds a real estate license and] principal broker is a Kentucky licensed real estate broker if the principal office location is outside of Kentucky;

(3) [of the company holds a real estate license;

(4) The regulatory body where the real estate company's principal office is located;

(5) A street address and phone number for the company's principal office [company].

Section 2. A real estate Internet real property advertisement of a licensee, or offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease shall include:

(1) The name of the licensee advertising the property or marketing services;

(2) The name of the principal broker of the company with whom the licensee is affiliated pursuant to KRS 324.010(6) and 324.010(14) or the name of the real estate company with which the licensee's license is held.

Section 3. A nonprincipal broker real estate licensee's [license] Internet home page shall include:

(1) The licensee's name;

(2) The principal broker with whom the licensee is affiliated or the name of the real estate company recorded with the Kentucky Real Estate Commission with which the licensee's license is held;

(3) A statement indicating [All jurisdictions in which] the licensee holds a Kentucky [real estate] license to broker real estate if the licensee's principal business location is outside Kentucky;

(4) The regulatory jurisdiction of the licensee's principal business address;

(5) A street address and phone number for the licensee's principal business location [where the licensee may be reached].

RON K. SMITH, Chairperson

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: February 1, 2001 at 1 p.m.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards for advertising and marketing on the internet.

(b) The necessity of this administrative regulation: KRS 324.117(6) indicates the legislative intent to address this issue. As the internet has become more prevalent throughout society, it has become more utilized for real estate brokerage activity. However, special concerns exist for internet marketing that do not exist for print adver-

tising. Specifically, print advertising almost necessarily must provide a phone number or address to reach the licensee. A phone number or address can be usually traced to one company or individual with the internet, anonymous advertising can be done through generic "screen names" or "email addresses". In order to provide accountability for licensees advertising on the internet and to prevent unlicensed brokerage, minimum accountability standards should be established.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute (KRS 324.117(6) provides the Real Estate Commission specific authority to create this regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As indicated in (1)(b) above, the regulatory requirements make clear what disclosures are required for Internet advertising or marketing. These requirements are necessitated by the special nature of the Internet.

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

(a) How the amendment will change this existing administrative regulation: After the public hearing and comments submitted from affected licensees, the proposed language is amended to minimize the regulation burden upon licensees. Specifically, the principal business address of the licensee's business is deemed sufficient disclosure to provide accountability for internet advertising presuming the licensee's principal business address is in Kentucky. If the licensee's principal business address is in Kentucky and internet advertisements disclose the principal business address, the commission can locate the individual who has placed the advertisement. If one advertising on the internet does not have a principal place of business in Kentucky, the designation "licensed to broker real estate in Kentucky" is necessitated to provide some measure of disclosure and prevent unlicensed brokerage of real estate.

(b) The necessity of the amendment to this administrative regulation: After the public hearing and comments submitted from affected licensees, the proposed language is amended to minimize the regulation burden upon licensees. Specifically, the principal business address of the licensee's business is deemed sufficient disclosure to provide accountability for internet advertising presuming the licensee's principal business address is in Kentucky. If the licensee's principal business address is in Kentucky and internet advertisements disclose the principal business address, the commission can locate the individual who has placed the advertisement. If one advertising on the internet does not have a principal place of business in Kentucky, the designation "licensed to broker real estate in Kentucky" is necessitated to provide some measure of disclosure and prevent unlicensed brokerage of real estate.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.117(6) indicates the commission "shall", by the promulgation of administrative regulations defining the manner in which licensees may utilize any internet electronic communication for advertising or marketing.

(d) How the amendment will assist in the effective administration of the statutes: KRS 324.117(6) indicates the commission "shall", by the promulgation of administrative regulations defining the manner in which licensees may utilize any internet electronic communication for advertising or marketing. Following submission of comments at the public hearing (as indicated in (2)(a) and (b) above). The amendment is sought to address the concerns therein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities advertising or marketing real estate on the Internet will be subject to the requirements of this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation will make clear Internet real estate advertising and marketing requirements.

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

(a) Initially: Estimated no cost to implement this regulation.

(b) On a continuing basis: No cost is estimated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.

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

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

(9) TIERING: Is tiering applied? Tiering is applied to the extent the requirements apply only to licensees advertising or marketing on the internet. If a licensee is not advertising or marketing on the internet, the licensee's activity would not contribute significantly to the problem the regulation is designed to address. Tiering is also applied with regard to the location of the principal business address of the licensee. If the licensee's principal business address is in Kentucky and internet advertisements disclose the principal business address, the commission can locate the individual who has placed the advertisement by virtue of agency records. Further, the geographical proximity of the licensee makes it easier for the Kentucky Real Estate Commission to deal with any improprieties by the licensee. If one advertising on the internet does not have a principal place of business in Kentucky, the designation "licensed to broker real estate in Kentucky" is necessitated to provide some measure of disclosure and prevent unlicensed brokerage of real estate. The Internet is available to anyone throughout the world. Therefore, the regulation seeks disclosure to alert consumers when they are dealing with a licensed entity and when they are not.

**KENTUCKY BOARD OF OPHTHALMIC DISPENSERS  
(Amended After Hearing)**

**201 KAR 13:050. Apprentices.**

RELATES TO: KRS 326.020, 326.035

STATUTORY AUTHORITY: KRS 326.020(3), 326.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.035 authorizes the board to issue an apprentice license to any person in training to be an ophthalmic dispenser. This administrative regulation establishes the requirements for an apprentice ophthalmic dispenser. [To define the terms "Ophthalmic Dispenser" and "Apprentice Ophthalmic Dispenser" and to specify the rights, powers and duties of the board with regard to Apprentice Ophthalmic Dispensers.]

Section 1. Definitions. (1) "Apprentice ophthalmic dispenser" means a person who is in training for the vocation of ophthalmic dispenser and who dispenses ophthalmic lenses, frames and appurtenances thereto to the intended wearer only under the supervision of a physician, osteopath, optometrist or licensed ophthalmic dispenser.

(2) "Ophthalmic dispenser" means a physician, osteopath, optometrist or licensed ophthalmic dispenser licensed pursuant to KRS 326.040 who is sponsoring an apprentice ophthalmic dispenser. [Definition: The term "ophthalmic dispenser" whenever used herein includes licensed physician, osteopath, optometrist and opticians licensed under KRS Chapter 326.]

Section 2. (1) [Apprentices. (1) An apprentice ophthalmic dispenser is one who is in training for the vocation of ophthalmic dispenser and as such dispenses ophthalmic lenses, frames and appurtenances thereto to the intended wearer only under the supervision of a licensed ophthalmic dispenser.

(2) An apprentice license shall be required of any person;

(a) Who is not a licensed ophthalmic dispenser, but [who] is in training to be an ophthalmic dispenser;

(b) [as such and] While in training works under the supervision of a licensed ophthalmic dispenser; [;] and

(c) Whose duties require that he perform the services as would be normally performed by a licensed ophthalmic dispenser.

(2) The board may revoke the apprentice license at any time if either the employer or the apprentice fail to carry out the provisions of this administrative regulation.

(3) A licensed apprentice ophthalmic dispenser shall at all times

work under the supervision of, and in the same establishment with, an [a licensed] ophthalmic dispenser, and the [licensed] ophthalmic dispenser shall be responsible for his acts.

(4) The board shall issue an apprentice license for a period ending December 31 of the current year, upon receipt and board approval of the required application and a fee of fifty (50) [twenty-five (25)] dollars. [The apprentice license may be renewed at the end of the calendar year, for a period of one (1) year, upon application to the board accompanied by the required fee of twenty-five (25) dollars.] In the event the apprentice's employment under the sponsoring ophthalmic dispenser is terminated for any reason, the board shall be notified immediately.

(5) [In the interest of adequate training for the apprentice, the sponsor shall file an outline of the training schedule he proposes to follow in training the apprentice, and also shall satisfy the board that the facilities of his establishment are sufficient to provide such training.]

(6) [The applicant shall give evidence of good faith in his intention to learn the vocation of ophthalmic dispensing; that he intends to apply himself to the subject and at the earliest date possible, after the expiration of two (2) years apprenticeship training, he intends to apply to the board for examination and to qualify as a licensed ophthalmic dispenser. The board may at its discretion refuse to further renew the license if he fails to carry out the provisions of this administrative regulation.]

(7) The board shall supply, upon request, a list of approved textbooks covering the subjects on which the examination is based. [For those who are interested in attending a college or university where courses of ophthalmic dispensing are offered, the board shall cooperate and offer every assistance possible].]

(6) [(7)] [(8)] The board may [reserves the right to] reject the application for an apprentice license or to rescind a license already issued if, upon inspection, it is found that any of the requirements for an apprentice license, as outlined in KRS 326.035 or the administrative regulations, are being violated.

(7) All administrative regulations regarding [rules of] conduct, paying of fees, suspensions or revocations and all other administrative regulations not specifically excluding apprentice licenses shall apply to the licensed apprentice ophthalmic dispenser.

GRANVILLE SMITH, Chair

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 8, 2001 at noon

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Nancy Black

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation specifies the requirements for apprentices.

(b) The necessity of this administrative regulation: This regulation is necessary to specify the requirements for apprentices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the board to regulate the requirements for licensure and for apprentice ophthalmic dispensers. Additionally, the fee increase set forth in this regulation is within the limits of the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists the board administer the program for apprentices.

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

(a) How the amendment will change this existing administrative regulation: The regulation deletes several requirements which the board has determined to be unnecessary.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to specify the requirements for apprentices.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes allow the board to regulate the requirements for licensure and for apprentice ophthalmic dispensers. Additionally, the fee increase set forth in this amendment is within the limits of the statute.



(d) How the amendment will assist in the effective administration of the statutes: The regulation assists the board in administering the program for apprentices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 240 ophthalmic dispenser apprentices.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Apprentices and their supervisors will be able to identify the requirements for apprentices.

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

(a) Initially: No additional administrative costs will be incurred in implementing this regulation.

(b) On a continuing basis: No additional administrative costs will be incurred in implementing this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the fee for apprentices from \$25 to \$50.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all apprentices.

**KENTUCKY BOARD OF OPHTHALMIC DISPENSERS  
(Amended After Hearing)**

**201 KAR 13:055. Continuing education requirements.**

RELATES TO: KRS 326.020, 326.080

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 326.020(3)(b) requires licensees of the board to complete continuing education as a condition of license renewal. This administrative regulation establishes** ~~[To establish]~~ a continuing education program for ophthalmic dispenser licensees and apprentice ophthalmic dispenser licensees **and** ~~[to set forth]~~ the basic requirements, methods of accreditation, and manner of reporting.

Section 1. "Continuing education hour" means fifty (50) contact minutes of participating in continuing education experiences.

Section 2. (1) Each ophthalmic dispenser licensee shall be required to complete a minimum of six (6) continuing education hours in order to renew his license each year.

(2) Each apprentice ophthalmic dispenser licensee shall be required to complete a minimum of four (4) continuing education hours in order to renew his license each year.

(3) Continuing education hours in excess of the number required at the time of renewal of license **shall** ~~[may]~~ not be applied to future requirements.

Section 3. (1) A minimum of three (3) of the required six (6) continuing education hours for renewal of ophthalmic dispenser licensure and a minimum of two (2) of the required four (4) continuing education hours for renewal of apprentice ophthalmic dispenser licensure shall be obtained through programs sponsored by entities listed in Section 4(1) of this administrative regulation.

(2) The remaining continuing education hours may be obtained through any of the sources listed in Section 4 of this administrative regulation.

**(3) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.**

**(4) Licenses issued after August 1 will be exempt from the**

**continuing education requirement for renewal by December 31 of the same year.**

Section 4. Continuing education hours applicable to renewal of licensure shall be directly related to the professional growth and development of ophthalmic dispensers. They may be earned by completing any of the following educational activities:

(1) **Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to ophthalmic dispensing and shall be approved without further review by the board if it is provided by** ~~[Relevant offerings provided by the following organizations or institutions that have been reviewed and approved by the board]:~~

(a) The Society of Dispensing Opticians of Kentucky;

(b) The Opticians Association of America, or any of its affiliated state chapters;

(c) The Contact Lens Society of America, or any of its affiliated state chapters;

(d) The National Academy of Opticianary, or any of its affiliated state chapters;

(e) The American Optometric Association, or any of its affiliated state chapters;

(f) The American Academy of Ophthalmology, or any of its affiliated state chapters;

(g) The Southeastern Conference ~~[Society of Dispensing Opticians]~~; or

(h) The National Association of Optometrists and Opticians.

(2) **Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board** ~~[Relevant offerings of the following types that have been reviewed and approved by the board]:~~

(a) Accredited schools' continuing education programs; or

(b) Any other provider's continuing education programs.

(3) Related areas not specifically a part of the field of ophthalmic dispensing may be approved for up to two (2) continuing education hours, if the board believes that **the** ~~[said]~~ related areas may serve to enhance the licensee's ability to practice.

Section 5. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) Programs shall be submitted to the board for review and approval at least ~~thirty (30)~~ **sixty (60)** days prior to planned participation so the participants can know the value of **the** ~~[such an]~~ experience prior to actual participation.

(2) Requests for program changes shall be made to and accredited by the board or the evaluation and accreditation of the program becomes null and void.

~~(3) [Repetitious completion of a program shall not entitle the participant to additional continuing education credit.]~~

~~(4)]~~ Sponsors shall maintain for three (3) years records of the names of those participants who complete a program.

Section 6. Sponsors and licensees requesting approval of continuing education for ophthalmic dispensers shall submit **any information the board may require** ~~[an application containing such information as the board may require on forms provided by the board].~~

Section 7. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 326.

Section 8. Each licensee shall submit, with the annual renewal application, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

Section 9. (1)(a) Each person registered with the board shall retain proof of attendance and completion of all continuing education requirements.

(b) These documents **shall** ~~[must]~~ be retained for a period of three (3) years from the end of the calendar year in which the con-



tinuing education was acquired.

(c) This documentation shall be produced for inspection and verification, if requested in writing by the board during its verification process.

(d) The board shall not maintain continuing education files.

(2)(a) The board shall conduct a randomly selected audit of individual records to assure that the continuing education requirements have been met.

(b) An individual's record may be audited during consecutive renewal periods.

(3) If audited, the individual shall ~~within fifteen (15) working days of a request from the board;~~ provide evidence of continuing education activities. ~~The [Such] evidence shall be either [submission of one (1) or more of the following]:~~

(a) Certificates verifying the individual's attendance at the continuing education programs described above ~~[An individual submitting a certificate as evidence of attendance at a continuing education program shall also be required to submit two (2) or more of the following for each program certified:~~

1. Registration receipt;
2. Signed program;
3. Canceled check;
4. Hotel bill;
5. Name badge; or
6. An original letter on official stationery signed by a professional associate who attended.

(b) ~~An original letter on official institution stationery from the instructor of the college-level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual;~~ or

(b) ~~[(c)]~~ An official transcript verifying credit hours earned. One (1) semester credit hour is equivalent to six (6) continuing education hours for the purpose of licensure renewal. ~~[Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.]~~

Section 10. Upon proper application to the board, a licensee may be granted a deferral on a year-to-year basis at the discretion of the board for reasons of illness, incapacity, or other similar extenuating circumstances. ~~[A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.]~~

Section 11. Each licensee shall keep the board informed of his correct address and place of employment. The board shall [must] be informed in writing of any changes to the licensee's address or place of employment.

GRANVILLE SMITH, Chair

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 8, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the elements of the continuing education program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the elements of the continuing education program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute provides for continuing education for licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will allow the board to identify how licensees will comply with the continuing education requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment will specify the mechanism for obtaining

approval for continuing education courses. As a result of the comments received, it will also exempt licenses issued after August 1 will be exempt from the continuing education requirement for renewal by December 31 of the same year.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to specify the mechanism for obtaining approval for continuing education courses.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute provides for continuing education for licensees.

(d) How the amendment will assist in the effective administration of the statutes: By identifying the means by which continuing education courses can be approved by the board and how licensees will substantiate their credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic dispenser apprentices.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Groups will be able to identify the means by which continuing education courses can be submitted to the board for approval.

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

(a) Initially: No additional administrative costs will be incurred in implementing this regulation.

(b) On a continuing basis: No additional administrative costs will be incurred in implementing this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees.

#### KENTUCKY BOARD OF OPHTHALMIC DISPENSERS (Amended After Hearing)

##### 201 KAR 13:060. Military service; reciprocity.

RELATES TO: KRS 326.020, 326.040

STATUTORY AUTHORITY: KRS 326.020(3), 326.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020 grants the board the authority to promulgate administrative regulations to carry out the purpose and provisions of KRS Chapter 326. This administrative regulation provides [To provide] for necessity of renewal of licenses by members of the military service and to provide reciprocity between the states.

Section 1. Military Service. Any license holder who is in the military service is exempt from renewing his license until he is honorably discharged from the service.

Section 2. Reciprocity. (1) A person may be licensed as an ophthalmic dispenser without complying with the provisions of KRS 326.040 if that person:

(a) Holds a valid license as an ophthalmic dispenser in another state whose qualifications at the time of licensure were equal to or higher than those requirements established in KRS 326.040 and 201 KAR 13:040; and

(b) Has been actively engaged in the practice of ophthalmic dispensing for a period of two (2) years immediately preceding the date of application.

(2) An applicant for licensure by reciprocity shall:

(a) Apply for licensure on the form required in 201 KAR 13:040, Section 1(1);

(b) Pay the application fee established in 201 KAR 13:040, Section 1(2);

(c) Provide a copy of the current license from the other jurisdiction; and

(d) Take and pass the practical examination established in 201 KAR 13:040, Section 8. [Any citizen of the United States who has been issued a license by the appropriate authority of their state to practice ophthalmic dispensing and who has been actively engaged in the active practice of ophthalmic dispensing for two (2) years, next preceding his application may be licensed by the Kentucky Board of Ophthalmic Dispensers without examination and without having spent two (2) years as an apprentice under the supervision of an ophthalmic dispenser, physician, osteopath or optometrist; provided, however, that his qualifications for licensing in his state were at the time of the issuance of said license equal to or higher than those requirements for the issuance of a license in the State of Kentucky.]

(2) ~~The foreign applicant shall file with the Kentucky Board of Ophthalmic Dispensers on the form provided for licensing, such information as shall be required thereon, together with a fee of fifty (50) [twenty-five (25)] dollars, no part of which shall be returned; and shall file with the said board three (3) affidavits attesting to the good moral character of said applicant.~~

(3) ~~Applicants for a reciprocal license shall take and pass the examination required under 201 KAR 13:040, Section 6.] [The board in its discretion may require the personal attendance of the applicant before it or one of its members to interrogate him in such way and manner as is desired to finally ascertain his fitness for licensing in this state.]~~

GRANVILLE SMITH, Chair

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 8, 2001 at noon

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation identifies the criteria for the exemptions for military service personnel, and for qualifying for reciprocity.

(b) The necessity of this administrative regulation: To identify the necessity of renewal of licenses by members of the military service, and to clarify the process whereby persons properly licensed in other states can receive a license in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires that applicants for licensure shall pay an application fee of \$50.00.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation specifies the requirements for persons in the military and person licenses in other states which the board follows when processing these applications.

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

(a) How the amendment will change this existing administrative regulation: The regulation increases the fee for out-of-state applicants for reciprocal licenses. It also makes clear that applicants for reciprocal license must pass the state's practical examination as is required of in-state applicants.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to cover the costs associated with processing applications from individuals licensed in other states.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that applicants for licensure shall pay an application fee of \$50. The statutes require that applicants for reciprocal license demonstrate that their qualifications are equal to or higher than those required of in-state applicants.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary to cover the costs associated with processing applications from individuals licensed in other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic dispenser apprentices.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The fee for applicants who are licensed in other states and who are applying for licensure will be increased by \$25 to a total of \$50.

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

(a) Initially: No additional costs will be incurred in implementing this regulation.

(b) On a continuing basis: No additional costs will be incurred in implementing this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the fee for out-of-state applicants from \$25 to \$50.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

#### 401 KAR 8:010. Definitions for 401 KAR Chapter 8.

RELATES TO: KRS 223.160 to 223.220, 224.10-100, 224.10-110, [Chapter 223-224;] 40 CFR 141.2, 141.25(c), 141.131

STATUTORY AUTHORITY: KRS 223.160 to 223.220, [Chapter 223-224;] 224.10-100, 224.10-110, 40 CFR Part 141, 141.25(c), 141.131, [44-2-(1995);] 42 USC[A] 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce statutes and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. The purpose of this administrative regulation is to define terms used by the cabinet in the regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and the Safe Drinking Water Act [PL-93-523], as amended, as well as to regulate certification of public water system operators pursuant to KRS Chapter 223. This administrative regulation conforms to federal regulations if federal regulations have definitions for terms contained in this administrative regulation.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:

(1) "Action level" means:

(a) The concentration of lead or copper in water specified in 401 KAR 8:300, Section 3, which determines, in some cases, the treatment requirements contained in 401 KAR 8:300 that a water system shall [is required to] complete.

(b) For the purpose of 401 KAR 8:075: the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system shall follow.

(2) "Approved source" means the source of the water whether it

be from a spring, well, public water system, or other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.

(3) "Auxiliary intake" means a piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.

(4) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system, (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, BAT shall be at least as effective as granular activated carbon.

(5) "Blood lead level" or "PbB level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood, or  $\text{mg/dl}$  [ $(\text{mg/dl})$ ].

(6) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(7) "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. The advisory shall include information concerning all actions which the affected public is advised to take.

(8) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for three (3) minutes at a rolling boil.

(9) "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.

(10) "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Except for the purpose of 401 KAR 8:075, a bottled water system [systems] shall be designated as a community public water system [systems].

(11) "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.

(12) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(14) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by these administrative regulations.

(15) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for one (1) or more types of the contaminants listed in these administrative regulations or for one (1) or more of the specific constituents or combinations of constituents listed.

(16) "Check samples" means chemical and radiological samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.

(17) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(18) "Commercial facility" means a building or other place at which commerce or trade takes place.

(19) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems shall monitor. Each compliance cycle shall consist of three (3) three (3) year compliance periods.

The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; and the third begins January 1, 2011 and ends December 31, 2019.

(20) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three (3) year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

(21) "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices.

(22) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.

(23) "Consecutive public water systems" means two (2) or more public water systems with interconnected distribution systems, the effect of which is to distribute water from one (1) system to the next.

(24) "Consumer confidence report" means the annual report prepared by a community water system pursuant to 401 KAR 8:075 that informs consumers of the quality of the water distributed by the system and characterizes the risks of exposure to contaminants found in drinking water.

(25) "Contaminant" means a physical, chemical, biological, or radiological substance or other matter found in water.

(26) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these administrative regulations.

(27) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(28) "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(29) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(30) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(31) "CPE" means a comprehensive performance evaluation.

(32) "Cross connection" means a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas, or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(33) "CT" or "CT calc" means the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application points. "CT<sub>99.9</sub>" means the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts.

$$\frac{CT_{calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\sum \frac{(CT_{calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one and zero-tenths (1.0) is assumed to provide a 3-log inactivation of *Giardia lamblia* cysts.

(34) "Customer" means, for the purpose of 401 KAR 8:075, a billing unit or service connection to which water is delivered by a community water system.

(35) "Department" means the Kentucky Department for Environmental Protection.

(36) "Detected" means, for the purpose of 401 KAR 8:075, at or above the level prescribed by:

(a) 401 KAR 8:250, Section 1(4), for an inorganic contaminant;

(b) 401 KAR 8:400, Section 1(18), or 401 KAR 8:420, Section 1(7), for an organic contaminant; or

(c) 40 CFR 141.25(c) for a radioactive contaminant, as adopted without change in Section 2 of this administrative regulation.

(37) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane, or [{}septum{}], and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(38) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(39) "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(40) "Disinfectant contact time" [{"T"} in CT calculations]) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. It is also the "T" in a CT calculation. If only one (1) "C" is measured, "T" means the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at the point where residual disinfectant concentration ("C") is measured. If more than one (1) "C" is measured, "T" means for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines shall [must] be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

(41) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(42) "Disinfection profile" means a summary of daily *Giardia lamblia* inactivation through the treatment plant, developed according to the procedure in 401 KAR 8:160, Section 3.

(43) "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(44) "Division" means the Division of Water.

(45) "DOC" means dissolved organic carbon, measured by milligrams per liter, or mg/l.

(46) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(47) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and the factors that account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements, or [{}ICRU{}].

(48) "Effective corrosion inhibitor residual", for the purpose of 401 KAR 8:300 only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(49) "Enhanced coagulation" means the addition of coagulation sufficient for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(50) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(51) "Fee" means a monetary charge to be assessed by the cabi-

net.

(52) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively. It includes an assessment of filter performance while another filter is being backwashed.

(53) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(54) "First draw sample" means a one (1) liter sample of tap water, collected in accordance with 401 KAR 8:300, Section 9(2)(b), that has been standing in plumbing pipes at least six (6) hours and is collected without flushing the tap.

(55) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(56) "Free flowing tap or outlet" means a tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(57) "GAC<sub>10</sub>" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes on average daily flow and a carbon reactivation frequency of every 180 days.

(58) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(59) "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 401 KAR 8:700 inclusive, and is not under the direct influence of surface water.

(60) "Groundwater under the direct influence of surface water" means water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, [or] large-diameter pathogens such as *Giardia lamblia*, or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with the cabinet's "Guidance for Determination of Groundwater under the Direct Influence of Surface Water, September 1993", incorporated by reference in Section 3 of this administrative regulation [criteria established by the cabinet]. The cabinet's determination of direct influence may be based on site-specific measurements of water quality as well as documentation of well construction characteristics and geology with field evaluation.

(61) "HAA5" means haloacetic acid five (5).

(62) "Haloacetic acid compounds" means monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid.

(63) "Haloacetic acid five (5)" or "HAA5" means the sum of the concentrations, in milligrams per liter, of the haloacetic acid compounds, rounded to two (2) significant digits after addition.

(64) "Initial compliance period" means the first full three (3) year compliance period: January 1993 to December 1995 for systems serving more than 150 service connections. For the contaminants listed at 401 KAR 8:250, Section 12(11) to (15); 401 KAR 8:400, Section 2(19) to (33); and 401 KAR 8:420, Section 2(1)(s) to (u); the initial compliance period shall be January 1996 to December 1998 for systems having fewer than 150 service connections.

(65) "Large water system", for the purpose of 401 KAR 8:300 only, means a water system that serves more than 50,000 persons.

(66) "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting which is connected to the lead line.

(67) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(68) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(69) "Maximum contaminant level" or "MCL" [(MGL)] means:

(a) The maximum permissible level of a contaminant in water

which is delivered to a user of a public water system as measured at points specified in 401 KAR 8:010 through 401 KAR 8:700 inclusive.

(b) For the purpose of 401 KAR 8:075: the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(70) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expect risk to health. MCLGs allow for a margin of safety.

(71) "Maximum residual disinfectant level" or "MRDL" means:

(a) A level of a disinfectant added for water treatment that shall not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects; or

(b) For the purpose of 401 KAR 8:075: the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(72) "Maximum residual disinfectant level goal" or "MRDLG" means:

(a) The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants; or

(b) For the purpose of 401 KAR 8:075: the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(73) "Maximum total trihalomethane potential" or "MTP" [(MTP)] means the maximum concentration of total trihalomethanes, or [TTHMs, {}] produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Celsius, or [seventy-seven (77) degrees Fahrenheit, {}] or above.

(74) "MCL" means maximum contaminant level.

(75) "MCLG" means maximum contaminant level goal.

(76) "Medium-size water system", for the purpose of 401 KAR 8:300 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

(77) "Mineral water" means bottled water that contains no less than 250 parts per million total dissolved solids.

(78) "MRDL" means maximum residual disinfectant level.

(79) "Near the first service connection" means at one (1) of the twenty (20) percent of service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(80) "NTU" means nephelometric turbidity unit.

(81) "Operator" means a person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or a portion thereof is operated in accordance with the laws and administrative regulations of the Commonwealth; or to supervise others in conducting the procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term "operator".

(82) "Optimal corrosion control treatment", for the purpose of 401 KAR 8:300 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(83) "Person" means an individual, trust, firm, joint stock company, corporation [(including a government corporation)], partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body.

(84) "Picocurie" or "pCi" [(pCi)] means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(85) "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(86) "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(87) "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(88) "Potable water" means water which meets the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive, the quality of which is approved by the cabinet for human consumption.

(89) "Private water supply" means a residential water supply located on private property for the use of one (1) to three (3) residential households [residents, and not qualifying as a public or semipublic water system].

(90) "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(91) "Professional engineer" means an engineer who is licensed [with current registration] as a professional engineer in Kentucky, pursuant to KRS Chapter 322.

(92) "Public water system" means a water system for the provision to the public of water for human consumption through a pipe or other constructed conveyance, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. The term includes collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and collection and pretreatment storage facilities not under control of the operator of the water system which are used primarily in connection with the water system.

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are either transient or nontransient.

1. "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

2. "Nontransient noncommunity water system" means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(93) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an internal organ or organ system.

(94) "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

(95) "Residual disinfectant concentration" [("C" in CT calculations)] means the concentration of disinfectant measured in mg/l in a representative sample of water. It is the "C" in a CT calculation.

(96) "Sanitary survey" means an on-site review of the water source, facilities, equipment, and operation and maintenance of a public water system for the purpose of evaluating the adequacy of source, facilities, equipment, and operation and maintenance for producing and distributing safe drinking water.

(97) "Secondary contaminants" means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(98) "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(99) "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(100) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(101) "Semipublic water system" means a water system made available for drinking or domestic use that [which serves more than three (3) families but] does not qualify as a private or public water system. Semipublic water systems which are commercial facilities which serve food or drink to the public shall meet the requirements of 401 KAR 8:020.

(102) "Service line sample" means a one (1) liter sample of water, collected in accordance with 401 KAR 8:300, Section 9(2)(c), that has been standing for at least six (6) hours in a service line.

(103) "Single family structure", for the purpose of 401 KAR 8:300

only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(104) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity, [generally less than four-tenths (0.4) m/h, ] resulting in substantial particulate removal by physical and biological mechanisms.

(105) "Small water system", for the purpose of 401 KAR 8:300 only, means a water system that serves 3,300 persons or fewer.

(106) "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these administrative regulations.

(107) "Standard Methods" means the 18th Edition of "Standard Methods for the Examination of Water and Wastewater," and its supplement, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

(108) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(109) "Step 2 requirement" means an alternate or alternative, minimum TOC removal requirement pursuant to 401 KAR 8:510.

(110) "Supplier of water" means a person who owns or operates a public water system.

(111) "Surface water" means water which is open to the atmosphere and subject to surface runoff, or groundwater under the direct influence of surface water.

(112) "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or a source of water supply for a public water system that has a free water surface exposed to the atmosphere, or groundwater under the influence of surface water.

(113) "SUVA" means specific ultraviolet absorption at 254 nanometers, or nm. It is an indicator of the humic content of water, calculated according to the procedures in 40 CFR 141.131, adopted without change in Section 2 of this administrative regulation.

(114) "System" means a public water system.

(115) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(116) "THM" means trihalomethane.

(117) "TOC" means total organic carbon.

(118) "Total organic carbon" or "TOC" means total organic carbon in mg/l, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants, that convert organic carbon to carbon dioxide, rounded to two (2) significant figures.

(119) "Total trihalomethanes ([THMs])" or "TTHMs" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethane, or [THM, ] compounds, [trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane, ] rounded to two (2) significant figures.

(120) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a forty-seven millimeter (47-mm) diameter membrane filter used for coliform detection.

(121) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(122) "Trihalomethane ([THM])" or "THM" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(123) "TTHM" means total trihalomethanes.

(124) "Turbidity" means the presence of suspended particulates, including[but not limited to:] sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(125) "Uncovered finished water storage facility" means a tank, reservoir, or other facility that is open to the atmosphere and is used to store water that will undergo no further treatment except residual disinfection.

(126) "Variance and exemption" means, for the purpose of 401 KAR 8:075, a permission issued by the cabinet pursuant to 401 KAR 8:060 to not meet an MCL or a treatment technique.

(127) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(128) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the cabinet.

(129) "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(130) "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:020, Section 2(18), a lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(131) "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage, and distribution of water for a public or semipublic water supply.

(132) "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical, or bacteriological quality of the water prior to entry to the water distribution system.

Section 2. Federal Regulation Adopted Without Change. (1) 40 CFR 141.25(c) and 141.131, July 2000.

(2) The subject matter of this administrative regulation relating to the definitions of "detected" and "SUVA" is governed by those federal regulations.

Section 3. Incorporation by Reference. (1) "Guidance for Determination of Groundwater Under the Direct Influence of Surface Water, September 1993", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 1, 2001

FILED WITH LRC: February 1, 2001 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax: (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the definitions of terms that are used in 401 KAR Chapter 8 and terms for the certification of public water system operators. 401 KAR Chapter 8 provides the administrative regulations for public and semipublic water systems that treat or distribute drinking water to their customers.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. KRS 223.160 to 223.220 requires the cabinet to develop administrative regulations for the certification of water plant operators. KRS Chapter 13A requires that definitions for terms used in an administrative regulation be contained either in Section 1 of that administrative regulation, or in the first administrative regulation of a chapter. The definitions in this administrative regulation are consistent with those required by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 141, the National Primary Drinking Water Regulations. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating this administrative regulation and



other administrative regulations in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides definitions to enable the cabinet to implement its program for the regulation and control of the purification of water for public and semipublic water use and for the regulation of the certification of public water system operators pursuant to KRS Chapter 223.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used in the chapter, so that the cabinet, regulated entities, and the public will understand the terms used in 401 KAR Chapter 8.

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

(a) How the amendment will change this administrative regulation: The amendments to this administrative regulation will add and change many definitions to be consistent with those added or amended by the U.S. EPA in its recent amendments to 40 CFR Part 141. Most of the new or amended definitions include those for the consumer confidence rule, the interim enhanced surface water treatment rule, and the disinfectant/disinfection byproducts rule. The definition of "public water system" is also being amended to add language regarding the conveyance of water "through a pipe or other constructed conveyance." This change will make the definition of "public water system" consistent with that of the federal Safe Drinking Water Act as amended (42 USC 300f, 300g, 300h, 300j). In addition, the definitions of semipublic water systems and private water systems are being amended to clarify the cabinet's intent. This administrative regulation is being amended after hearing to specify in Section 1(91) that a professional engineer is one who is "licensed" instead of "registered," since that is the term that is used in KRS Chapter 322.

(b) The necessity of the amendment to this administrative regulation: These changes are necessary to allow the cabinet to maintain "primacy" for the enforcement and implementation of the federal program. The Safe Drinking Water Act was amended extensively in August 1996, necessitating extensive changes to the federal regulations in 40 CFR Parts 141 and 142. The changes to this administrative regulation are consistent with the changes to the counterpart federal regulations, or the Safe Drinking Water Act, as amended. These changes will also allow the cabinet to maintain its program for the purification of water for public and semipublic use.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments will allow the cabinet to maintain "primacy" for the implementation and enforcement of the federal drinking water program, thus allowing the cabinet to maintain its program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amended definitions will be a part of the cabinet's program for the purification of water for public or semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this administrative regulation applies to all public and semipublic water suppliers of drinking water in Kentucky (of which there are currently about 650 public water systems and 90 semipublic water systems, serving more than 3,000,000 Kentuckians), there is no impact as a result of merely defining terms used in the chapter. Any impact would occur in the administrative regulation where the term is used.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be no direct impact as a result of implementing this administrative regulation that adds or amends existing definitions. Any impact would occur in the administrative regulation where the term is used. There is no impact on the regulated industry as a result of the amendment to the definition of "professional engineer."

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

(a) Initially: There are no initial costs as a result of adding or amending definitions. Any impact would occur in the administrative regulation where the term is used.

(b) On a continuing basis: There are no continuing costs as a result of adding or amending definitions. Any impact would occur in the

administrative regulation where the term is used.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation on definitions. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as is outlined in other administrative regulations of this chapter.

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

(9) TIERING: Is tiering applied? No, tiering is not applied. Tiering is not applicable: This administrative regulation merely adds or amends terms that are used throughout 401 KAR Chapter 8.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.2.

2. State compliance standards. 401 KAR 8:010, Section 1.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation defines certain terms, and if the same term is used in 401 KAR Chapter 8, that term is defined in this administrative regulation, with the same federal definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, if the terms are defined in the federal regulation, then the definitions are effectively the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### 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. This administrative regulation will indirectly affect public water systems, many of which are owned or controlled by local governments. However, since this administrative regulation only defines terms, there is no direct impact.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues since this administrative regulation provides definitions of terms used in 401 KAR Chapter 8. Any impact on revenues would occur in the administrative regulation where the term is used.

Expenditures (+/-): There is no anticipated effect on current expenditures since this administrative regulation provides definitions of terms used in 401 KAR Chapter 8. Any impact on expenditures would occur in the administrative regulation where the term is used.

Other Explanation: None



NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water  
(Amended After Hearing)

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS 223.160 to 223.220, 224.10-100, 224.10-110, [Chapters 223, 224,] 40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15

STATUTORY AUTHORITY: KRS 223.160 to 223.220, [Chapter 223,] 224.10-100, 224.10-110, 40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15 [(1993)], 42 USC[A] 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce statutes and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [such] primary enforcement responsibility. The purpose of this administrative regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.10-110, as well as the Safe Drinking Water Act, as amended. This administrative regulation is being amended to require a public or semipublic water system to notify the affected local health department if a boil water notice, boil water advisory, or consumer advisory is issued. The cabinet is also incorporating the most recent version of "Recommended Standards for Water Works". There are no comparable federal requirements for these provisions.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 401 KAR 8:700, inclusive except those noted in subsection (2) of this section. A semipublic water system which is a commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.

(2) Exclusions. Except as stated above, this chapter shall [does] not apply to water systems in the following two (2) categories:

(a) Water systems which consist only of distribution and storage facilities, which do not have collection or treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these administrative regulations, and which do not sell water to any person; or

(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance, and Safety Requirements. (1) Public and semipublic water systems. A [No] person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive. Water supply systems constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or the system obtains a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.

(2) Cross-connections prohibited. All cross-connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be necessary due to the degree of hazard to public

health. Every public water system shall determine if or where cross-connections exist and shall immediately eliminate them.

(3) Bypasses. A [No] bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which shall exist for its use.

(4) Auxiliary intakes. An [No] auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate the intake.

(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and a filter backwash, filter-to-waste drains or clearwell overflow lines, unless an approved air gap is provided between these [such] drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.

(6) Proper operation and maintenance. The owner or operator of a public water system shall properly operate and maintain all facilities and systems of treatment, intake and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 401 KAR 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.

(7) Reports to the cabinet.

(a) Monthly operating reports. The supplier of water shall file complete monthly operating reports with the cabinet. The reports shall be provided in a manner approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent. The supplier of water shall submit the following reports to the cabinet no later than ten (10) days after the end of each month the public water system serves water to the public:

1. Turbidity measurements with maximum contaminant levels and monitoring in accordance with 401 KAR 8:150. The supplier of water shall include the following turbidity information in the monthly operating report:

a. The total number of filtered water turbidity measurements taken during the month.

b. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 401 KAR 8:150, Section 2, for the filtration technology being used.

c. The date and value of any turbidity measurements taken during the month which exceed five (5) NTU.

2. Disinfection information specified in 401 KAR 8:150, Section 3(2)(b). The supplier of water shall include the following disinfection information in the monthly operating report:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below the residual requirements as specified in 401 KAR 8:150, Section 1(1), and when the cabinet was notified as of the occurrence.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):

(i) Number of instances where the residual disinfectant concentration is measured.

(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or [HPC] is measured.

(iii) Number of instances where the residual disinfectant concen-

tration is measured but does not measure at least two-tenths (0.2) milligrams per liter or ppm or the equivalent and no HPC is measured.

(iv) Number of instances where residual disinfectant concentration is less than two-tenths (0.2) milligrams per liter and where HPC is greater than 500/ml.

(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(vi) For the current and previous month the system serves water to the public the value of "V" in the following formula:

$$V = \frac{c + d + e}{a + b} \times 100$$

where

a = the value in subclause (i) of this clause

b = the value in subclause (ii) of this clause

c = the value in subclause (iii) of this clause

d = the value in subclause (iv) of this clause

e = the value in subclause (v) of this clause

(vii) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:150, Section 3(1)(c), and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)2c(i) through (vi) of this subsection shall [do] not apply.

d. A system need not report the data listed in clause a of this subparagraph if all data listed in clauses a through c of this subparagraph remain on file at the system and the cabinet determines that the system has submitted all the information required by clauses a through c of this subparagraph for at least twelve (12) months.

3. Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (c) of this subsection. If the turbidity exceeds five (5) NTU, the system shall inform the cabinet as soon as possible in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system shall notify the cabinet as soon as possible in accordance with paragraph (c) of this subsection. The system also shall notify the cabinet by the end of the next business day whether or not the residual was restored to the residual required by 401 KAR 8:150, Section 1(1), within four (4) hours.

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR 8:010 through 401 KAR 8:700, inclusive, including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a line break as described in 401 KAR 8:150, Section 4(3), loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report required by paragraph (c) of this subsection is made during [at-a-time] other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analysis;
5. The analytical technique or method used; and
6. The results of the analysis.

(b) Bacteriological analysis records shall be kept at least five (5)

years.

(c) Chemical analysis records shall be kept at least ten (10) years.

(d) Turbidity analysis records shall be kept at least one (1) year.

(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or a local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved. [;at-which-time] They may be then transferred to the cabinet.

(g) Records concerning a variance or exemption granted to the system shall be kept no less than five (5) years following the expiration of the variance or exemption.

(9) Boil water notices and consumer advisories.

(a) Boil water notices and advisories. Public water systems and semipublic water systems may issue boil water notices or boil water advisories if the system believes a notice or advisory is warranted. The cabinet may direct that a boil water notice be issued when positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory. The cabinet may direct that a boil water advisory be issued when conditions within a public water system indicate a possible adverse health effect from microbiological contamination may result from consumption of the water distributed by a system. The cabinet may, when it determines circumstances warrant, issue a boil water notice or boil water advisory directly, rather than rely on a public or semipublic water system to issue the notice. All boil water notices or advisories shall remain in effect until the cabinet determines or approves the notice or advisory may be lifted.

(b) Consumer advisory. The cabinet may issue a consumer advisory if conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system or when other information of interest to the consumer exists. The advisory will notify affected persons of a required or recommended action that should be taken.

(c) A public or semipublic water system shall either:

1. If a boil water notice, boil water advisory, or consumer advisory is issued, [the public or semipublic water system shall] immediately notify the local health department that serves the area affected by the notice or advisory. The notice may be made by telephone or fax machine for an occurrence during normal business hours. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or

2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department when the system issues a boil water notice, boil water advisory, or consumer advisory. The protocol shall address for which types of notices the system shall notify the affected health department; what procedures shall be used to notify; and under what circumstances, how soon after the occurrence, and to whom the notification shall be made, during and after business hours. The public or semipublic water system shall comply with the agreed-upon protocol.

(10) How to issue notice or advisory. Boil water notices, boil water advisories, and consumer advisories shall be issued through newspapers, radio, television, or other media having an immediate public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals which maintain public awareness. The notice or advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least three (3) minutes at a rolling boil.

(11) Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR 8:010 through 401 KAR 8:700 inclusive.

(12) Maps. Within twelve (12) months of November 15, 1990, public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show line size, cutoff

valves, fire hydrants, flush hydrants, tanks, booster pumps, chlorination stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper documentation, lost documentation or other valid reason is not able to [cannot] comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for the tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and shall be available by November 16, 1991. Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units, or [(NTU)]; an inability to maintain an adequate residual of a disinfection agent in any part of the system; or a heterotrophic plate count, or [(HPC)], [-] in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce a substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8:010 through 401 KAR 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity and disinfectant residuals may be performed by a person approved by the cabinet.

(17) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations which the cabinet has the authority to enforce. Entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed, or used under the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive. The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

- (a) Prohibition of swimming, water skiing, and other contact sports.
- (b) Prohibition of large motor-driven craft or any craft with toilets.
- (c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.
- (d) [No] Effluent from sewage treatment plants shall not be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. Chemical additives and protective materials, [(such as paints and linings, )] used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the [such] stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 5(1) [4(4)] of this administrative regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 CFR 142.14 and 142.15, [as amended at 54 Federal Register 27,557, 27,567, and 27,579 (1989); 56 Federal Register 3595 (1991) and 56 Federal Register 26562 (1991); hereby] adopted without change in Section 4 of this administrative regulation.

Section 4. Federal Regulations Adopted Without Change. (1) 40 CFR 142.14, 142.15, July 2000.

(2) The subject matter of this administrative regulation relating to the records and reports required to be maintained by the cabinet shall be governed by those federal regulations.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference [materials are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays, at the Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Ky. 40601]:

(a) [(1)] Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works, 1997," A Report of the Committee of the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers [1992], published by the Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(b) [(2)] "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.

(c) [(3)] "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges, ["] 1983", published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 1, 2001

FILED WITH LRC: February 1, 2001 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation stipulates general provisions for public and semipublic wa-

ter supplies to enable the supplies to comply with KRS 224.10-110 as well as the Safe Drinking Water Act, as amended.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. KRS 223.160 to 223.220 requires the cabinet to develop administrative regulations for the certification of water plant operators. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating this administrative regulation and other administrative regulations in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides general provisions for public and semipublic water supplies, including operation, maintenance, and safety requirements, and reporting and record keeping requirements. These provisions are part of the overall drinking water program for the regulation and control of the purification of water for public and semipublic water use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides general provisions for public and semipublic water supplies and is a part of the overall drinking water program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: The major amendment to this administrative regulation will require a public or semipublic water system to notify an affected local health department if a boil water notice, boil water advisory, or consumer advisory is issued. Another amendment will update the version of "Recommended Standards for Water Works" (also known as "Ten States Standards") to the 1997 version. This administrative regulation is being amended after the public hearing in Section 2(9)(c) to state that a public or semipublic water system shall either notify the affected health department of a boil water notice, boil water advisory, or consumer advisory or develop a protocol with an affected local health department. The protocol would address under what circumstances the health department would be notified, how the health department would be notified, and how soon after the occurrence the health department would be notified.

(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health Services, Division of Public Health Protection and Safety, requested that the first change be made so that the local health departments in the affected area will be aware of a boil water advisory, boil water notice, or consumer advisory so that they can take any necessary actions. The latest edition of the "Ten States Standards" will be used for design and specifications since that is the version that can be purchased, and it has the most recent recommendations for technical and operational considerations.

(c) How the amendment conforms to the content of the authorizing statutes: The cabinet will continue to manage its program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amended definitions will be a part of the cabinet's program for the purification of water for public or semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation potentially affects all public and semipublic water suppliers of drinking water in Kentucky, of which there are currently about 650 public water systems and 90 semipublic water systems serving more than 3,000,000 Kentuckians. Those systems would be affected by the first amendment only if a boil water notice, boil water advisory, or consumer advisory were issued. While the number of notices and advisories can vary from year to year, according to the Division of Water's database, from August 1999 to August 2000, approximately 535 notices or advisories were issued by 111 of Kentucky's 650 public water systems.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regula-

tion, if new, or by the change if it is an amendment: If a boil water notice, boil water advisory, or consumer advisory is issued, then the public or semipublic water system would need to notify the affected local health department. Also, all systems would be required to plan changes using the updated "Ten States Standards" for their water system design. The amendments to this administrative regulation after the public hearing will allow the water system to develop a protocol with a local health department. The amendments will allow the health department to receive the information it needs about boil water notices, boil water advisories, and consumer advisories, without being unduly burdensome on the water system.

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

(a) Initially: There is no cost as a result of notifying affected local health departments when a boil water notice, boil water advisory, or consumer advisory is issued. The newest edition of "Ten States Standards" costs \$8.00 plus shipping and handling charges.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the cabinet maintains "primacy" for the enforcement and implementation of the federal program.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied. This administrative regulation provides the general provisions for public and semipublic water supplies to use in the operation of the water supply system, therefore tiering is generally not applicable. However, other administrative regulations in this chapter are tiered.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75

2. State compliance standards. 401 KAR 8:020.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations contain standards for coverage; reporting, record keeping, and public notification requirements; filtration and disinfection requirements; requirements for systems that filter; and analytical and monitoring requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The requirements are generally the same, except that Kentucky extends some provisions to semipublic water systems, instead of just public water systems. Also, Kentucky requires all systems to submit monthly operating reports. Also, it is an additional requirement for a public water system to notify the local health department if a boil water notice, boil water advisory, or consumer advisory is issued.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements are necessary for Kentucky to implement and maintain its program for the purification of public and semipublic water supplies, as directed by KRS 224.10-110. Also, the Cabinet for Health Services requested that this amendment be made.

#### 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 admin-

istrative regulation will affect. This administrative regulation will affect public water systems, many of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There would be no effect on expenditures as a result of the amendment relating to notifying the affected local health departments of boil water notices, boil water advisories, or consumer advisories. There could be a possible expenditure of \$8.00 plus shipping & handling costs to purchase the revised "Ten States Standards." However, many public water systems will generally purchase that document as a part of their normal operating procedure and keep the document in their library or operator's office, therefore it would not be a true cost of this administrative regulation.

Other Explanation: None

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water  
(Amended After Hearing)**

**401 KAR 8:075. Consumer confidence reports.**

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 141.25(e), 141.142, 141.143, 141.151 to 141.155, 42 USC 300f, 300g, 300h, 300j

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.25(e), 141.142, 141.143, 141.151 to 141.155, 42 USC 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation establishes minimum requirements for the content of an annual report that a community water system shall deliver to its customers. The report shall contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water, in an accurate and understandable manner. Some provisions relating to reporting and recordkeeping requirements are in addition to those required by the federal regulation. These provisions will allow the cabinet to verify that the required report was prepared and distributed to customers by specified dates, thus ensuring the system's customers, and citizens of the Commonwealth, that the community water system is operating according to regulatory requirements. [Also, the provision of this administrative regulation relating to the notification of the public of possible health risks of the drinking water delivered to the consumer is different than that required by the federal regulation in 40 CFR Part 141, Subpart O. The federal regulation encourages, but does not require, a public water system to report to its customers data on another contaminant that may have a possible health risk, but is not listed as a contaminant in 40 CFR Part 141. This administrative regulation requires that if a system has knowledge of a possible health risk of a contaminant in its drinking water, then it shall report the results to its customers. This requirement will protect the citizens of the Commonwealth from possible health risks associated with their drinking water.] Finally, this administrative regulation requires that a community water

system submit to the cabinet the report and the certification by the same date, whereas the federal regulation requires that the certification be submitted three (3) months after the report is submitted. The two (2) separate reporting dates for the reports and the certifications in the federal regulation have been a continuous source of confusion for the operators of the community water system, and has resulted in violations issued because of the confusion. Having one (1) submittal date will simplify the requirements.

Section 1. Applicability. (1) Notwithstanding 401 KAR 8:020, Section 2, a community water system shall submit an annual report to its customers and to the cabinet according to the requirements in this administrative regulation. The report shall contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(2)(a) An existing community water system shall deliver its first report by October 19, 1999; its second report by July 1, 2000; and subsequent reports by July 1 annually thereafter.

(b) The first report shall contain data collected during or before calendar year 1998 as prescribed in Section 2(3)(c) of this administrative regulation. Each report after the first report shall contain data collected during or before the previous calendar year.

(3) A new community water system shall deliver its first report by July 1 of the year after its first full calendar year in operation. Subsequent reports shall be delivered by July 1 of each year.

(4) A community water system that sells water wholesale to another community water system shall deliver the applicable information required in Section 2 of this administrative regulation to the buyer system:

(a) By April 19, 1999; by April 1, 2000; and by April 1 of subsequent years; or

(b) On a date mutually agreed upon by the seller and the purchaser. The dates shall be specifically included in a contract between the parties.

Section 2. Report Contents. The report required by this administrative regulation shall contain the information specified in this section and Section 3 of this administrative regulation.

(1) Information on the source of the water delivered:

(a) The report shall identify each source of the water delivered by providing information on:

1. The type of water, either surface water, groundwater, or other specified water type; and

2. The commonly used name and location of the body of water.

(b)1. If a source water assessment has been completed, the report shall notify consumers of the availability of the information and how to obtain it. A system may highlight in the report significant sources of contamination in the source water area.

2. If the cabinet has performed a source water assessment of the system, the report shall include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the cabinet or written by the operator.

(2) Definitions. The report shall contain the definitions found in 401 KAR 8:010 for the following terms.

(a) Maximum contaminant level goal, or MCLG;

(b) Maximum contaminant level, or MCL;

(c) Variance and exemption, if the system is operating under a variance or an exemption issued under 401 KAR 8:060;

(d) Treatment technique, action level, maximum residual disinfectant level goal or MRDLG, or maximum residual disinfectant level or MRDL, as applicable, if the report contains data on a contaminant that the U.S. EPA has set a treatment technique, action level, MRDLG, or MRDL.

(3) Information on detected contaminants.

(a) The report shall contain information on the following contaminants that are detected in the water, subject to mandatory monitoring, except *Cryptosporidium*:

1. The regulated contaminants that are subject to an MCL, action level, maximum residual disinfectant level, or treatment technique;

2. The unregulated contaminants for which monitoring is required by 401 KAR 8:440; and

3. Disinfection by-products or microbial contaminants for which

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monitoring is required by 40 CFR 141.142 and 141.143, except as provided under subsection (4)(a) of this section, and that are detected in the finished water.

(b) The data relating to the contaminants in paragraph (a) of this subsection shall be displayed in one (1) table or several adjacent tables. If a community water system includes in the report other monitoring results including a nondetected contaminant, the results shall be displayed separately.

(c) The data shall be derived from data collected to comply with cabinet and U.S. EPA monitoring and analytical requirements during calendar year 1998 for the first report, and subsequent calendar years thereafter except that:

1. If a system is allowed to monitor for regulated contaminants less often than once a year:

a. The table shall include the date and results of the most recent sampling; and

b. The report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the administrative regulations in 401 KAR Chapter 8.

c. Data that are older than five (5) years may be reported.

2. Results of monitoring in compliance with 40 CFR 141.142 and 141.143 shall be included for only five (5) years from the date of the last sample or until the detected contaminant becomes regulated and subject to routine monitoring requirements, whichever occurs first.

(d) For detected regulated contaminants listed in Table A in this paragraph, the table in the report shall contain the information required in subparagraphs 1 to 5 of this paragraph.

Table A. Converting MCL Compliance Values for Consumer Confidence Reports

Contaminant, units	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR Units	MCLG in CCR Units
<b>Microbiological contaminants</b>				
1. Total coliform bacteria	For a system that collects $\geq 40$ samples per month: 5% of monthly samples are positive; For a system that collects $< 40$ samples per month: 1 positive monthly sample		For a system that collects $\geq 40$ samples per month: 5% of monthly samples are positive; For a system that collects $< 40$ samples per month: 1 positive monthly sample	0
2. Fecal coliform and E. coli			A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive	0
3. Total organic carbon, ppm	TT		TT	n/a
4. Turbidity			TT, NTU	n/a
<b>Radioactive contaminants</b>				
5. Beta or photon emitters	4 mrem/yr		4 mrem/yr	n/a
6. Alpha emitters	15 pCi/l		15 pCi/l	n/a
7. Combined radium	5 pCi/l		5 pCi/l	n/a
<b>Inorganic contaminants</b>				
8. Antimony	.006	1000	6 ppb	6
9. Arsenic	.05	1000	50 ppb	n/a
10. Asbestos	7 MFL		7 MFL	7
11. Barium	2		2 ppm	2
12. Beryllium	.004	1000	4 ppb	4
13. Cadmium	.005	1000	5 ppb	5
14. Chromium	.1	1000	100 ppb	100
15. Copper	AL = 1.3		AL = 1.3 ppm	1.3
16. Cyanide	.2	1000	200 ppb	200
17. Fluoride	4		4 ppm	4
18. Lead	AL = .015	1000	AL = 15 ppb	0
19. Mercury, inorganic	.002	1000	2 ppb	2
20. Nitrate	10		10 ppm	10
21. Nitrite	1		1 ppm	1
22. Selenium	.05	1000	50 ppb	50
23. Thallium	.002	1000	2 ppb	0.5
<b>Synthetic organic contaminants including pesticides and herbicides</b>				
24. 2,4-D	.07	1000	70 ppb	70
25. 2,4,5-TP, Silvex	.05	1000	50 ppb	50
26. Acrylamide	TT		TT	0
27. Alachlor	.002	1000	2 ppb	0
28. Atrazine	.003	1000	3 ppb	3
29. Benzo(a)pyrene, or PAH	.0002	1,000,000	200 nanogram/L, or ppt	0
30. Carbofuran	.04	1000	40 ppb	40
31. Chlordane	.002	1000	2 ppb	0
32. Dalapon	.2	1000	200 ppb	200
33. Di(2-ethylhexyl) adipate	.4	1000	400 ppb	400
34. Di(2-ethylhexyl) phthalate	.006	1000	6 ppb	0
35. Dibromochloropropane	.0002	1,000,000	200 ppt	0
36. Dinoseb	.007	1000	7 ppb	7
37. Diquat	.02	1000	70 ppb	20



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38. Dioxin, 2,3,7,8-TCDD	.00000003 or 3.0 X 10 <sup>-8</sup>	1,000,000,000 or 1 X 10 <sup>9</sup>	30 ppq	0
39. Endothall	.1	1000	100 ppb	100
40. Endrin	.002	1000	2 ppb	2
41. Epichlorohydrin			TT	0
42. Ethylene dibromide	.00005	1,000,000	50 ppt	0
43. Glyphosate	.7	1000	700 ppb	700
44. Heptachlor	.0004	1,000,000	400 ppt	0
45. Heptachlor epoxide	.0002	1,000,000	200 ppt	0
46. Hexachlorobenzene	.001	1000	1 ppb	0
47. Hexachlorocyclopentadiene	.05	1000	50 ppb	0
48. Lindane	.0002	1,000,000	200 ppt	200
49. Methoxychlor	.04	1000	40 ppb	40
50. Oxamyl, or Vydate	.2	1000	200 ppb	200
51. PCBs, or Polychlorinated biphenyls	.0005	1,000,000	500 ppt	0
52. Pentachlorophenol	.001	1000	1 ppb	0
53. Picloram	.5	1000	500 ppb	500
54. Simazine	.004	1000	4 ppb	4
55. Toxaphene	.003	1000	3 ppb	0
Volatile organic contaminants				
56. Benzene	.005	1000	5 ppb	0
57. Bromate	.010	1000	10 ppb	0
58. Carbon tetrachloride	.005	1000	5 ppb	0
59. Chloramines	MRDL = 4	--	MRDL = 4 ppm	MRDLG = 4
60. Chlorine	MRDL = 4	--	MRDL = 4 ppm	MRDLG = 4
61. Chlorite	1	--	1	0.8
62. Chlorine dioxide	MRDL = .8	1000	MRDL = 800	MRDLG = 800
63. Chlorobenzene	.1	1000	100 ppb	100
64. o-Dichlorobenzene	.6	1000	600 ppb	600
65. p-Dichlorobenzene	.075	1000	75 ppb	75
66. 1,2-Dichloroethane	.005	1000	5 ppb	0
67. 1,1-Dichloroethylene	.007	1000	7 ppb	7
68. cis-1,2-Dichloroethylene	.07	1000	70 ppb	70
69. trans-1,2-Dichloroethylene	.1	1000	100 ppb	100
70. Dichloromethane	.005	1000	5 ppb	0
71. 1,2-Dichloropropane	.005	1000	5 ppb	0
72. Ethylbenzene	.7	1000	700 ppb	700
73. Haloacetic acids, or HAA	.060	1000	60	n/a
74. Styrene	.1	1000	100 ppb	100
75. Tetrachloroethylene	.005	1000	5 ppb	0
76. 1,2,4-Trichlorobenzene	.07	1000	70 ppb	70
77. 1,1,1-Trichloroethane	.2	1000	200 ppb	200
78. 1,1,2-Trichloroethane	.005	1000	5 ppb	3
79. Trichloroethylene	.005	1000	5 ppb	0
80. TTHMs, or Total trihalomethanes	.10/.08*	1000	100/80* ppb	n/a
81. Toluene	1		1 ppm	1
82. Vinyl chloride	.002	1000	2 ppb	0
83. Xylenes	10		10 ppm	10

\* After January 1, 2002, for a system that serves >10,000 people and that uses as its source surface water or groundwater under the direct influence of surface water;

After January 1, 2004, for a system that serves >10,000 and that uses as its source groundwater not under the influence of surface water or that serves ≤ 10,000 and that uses as its source surface water or groundwater under the direct influence of surface water.

Where:

AL = Action level

MCL = Maximum contaminant level

MCLG = Maximum contaminant level goal

MFL = Million fibers per liter

MRDL = Maximum residual disinfectant level

MRDLG = Maximum residual disinfectant level goal

mrem/yr = millirems per year, a measure of radiation absorbed by the body

n/a = Not applicable

NTU = Nephelometric turbidity units

pCi/l = picocuries per liter, a measure of radioactivity

ppm = parts per million, or milligrams per liter, mg/l

ppb = parts per billion, or micrograms per liter, µg/l

ppt = parts per trillion, or nanograms per liter



ppq = parts per quadrillion, or picograms per liter  
TT = Treatment technique

1. The MCL for that contaminant expressed as a number equal to or greater than one and zero-tenths (1.0), as provided in Table A;
2. The MCLG for that contaminant, expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant. The report shall include the definition for treatment technique or action level, as appropriate;
4. For a contaminant subject to an MCL, except turbidity and total coliforms: the highest contaminant level used to determine compliance with 401 KAR 8:010 to 401 KAR 8:550 and the range of detected levels, as indicated in this subparagraph, expressed in the same unit as the MCL. If a result is rounded to determine compliance with the MCL, rounding shall be done before multiplying the result by the factor listed in Table A:
  - a. If compliance with the MCL is determined annually or less frequently: the highest detected level at a sampling point and the range of detected levels;
  - b. If compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points;
  - c. If compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all

sampling points: the average and range of detection.

5. For turbidity reported pursuant to 401 KAR 8:150 or 401 KAR 8:160: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 401 KAR 8:150 and 401 KAR 8:160 for the filtration technology being used. The report shall include an explanation of the reason for measuring turbidity;
6. For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;
7. For total coliform:
  - a. The highest monthly number of positive samples for systems collecting fewer than forty (40) samples per month; or
  - b. The highest monthly percentage of positive samples for systems collecting at least forty (40) samples per month.
8. For fecal coliform: The total number of positive samples; and
9. The likely source of each detected contaminant, to the best of the operator's knowledge. Specific information on a contaminant may be available in a sanitary survey or source water assessment, and shall be used if it is available to the operator. If the operator lacks specific information on the likely source, the report shall include one (1) or more of the typical sources for that contaminant listed in Table B that are most applicable to the system.

Table B. Major Sources and Health Effects Language for Regulated Contaminants		
Contaminant, units	Major Sources in Drinking Water	Health Effects Language
Microbiological contaminants		
1. Total coliform bacteria	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
2. Fecal coliform and E. coli	Human and animal fecal waste.	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.
3. Total organic carbon	Naturally present in the environment.	Total organic carbon, or TOC, has no health effects. However, TOC provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes, or THMs, and haloacetic acids, or HAAs. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
4. Turbidity	Soil runoff.	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Radioactive contaminants		
5. Beta or photon emitters	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
6. Alpha emitters	Erosion of natural deposits.	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
7. Combined radium	Erosion of natural deposits.	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Inorganic contaminants		
8. Antimony	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
9. Arsenic	Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

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10. Asbestos	Decay of asbestos cement water mains; erosion of natural deposits.	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
11. Barium	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
12. Beryllium	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
13. Cadmium	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints.	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
14. Chromium	Discharge from steel and pulp mills; erosion of natural deposits.	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
15. Copper	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
16. Cyanide	Discharge from steel and metal factories; discharge from plastic and fertilizer factories.	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
17. Fluoride	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.
18. Lead	Corrosion of household plumbing systems; erosion of natural deposits.	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
19. Mercury, inorganic	Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from cropland.	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
20. Nitrate	Runoff from fertilizer use; leaching from septic tanks; sewage; erosion of natural deposits.	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
21. Nitrite	Runoff from fertilizer use; leaching from septic tanks, sewage, erosion of natural deposits.	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
22. Selenium	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
23. Thallium	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic organic contaminants including pesticides and herbicides		
24. 2,4-D	Runoff from herbicide used on row crops.	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
25. 2,4,5-TP, or Silvex	Residue of banned herbicide.	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
26. Acrylamide	Added to water during sewage or wastewater treatment.	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
27. Alachlor	Runoff from herbicide used on row crops.	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
28. Atrazine	Runoff from herbicide used on row crops.	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
29. Benzo(a)pyrene, or PAH	Leaching from linings of water storage tanks and distribution lines.	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
30. Carbofuran	Leaching of soil fumigant used on rice and alfalfa.	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or

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		nervous or reproductive systems.
31. Chlordane	Residue of banned termiticide.	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
32. Dalapon	Runoff from herbicide used on rights of way.	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
33. Di (2-ethyl-hexyl) adipate	Discharge from chemical factories.	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
34. Di (2-ethyl-hexyl) phthalate	Discharge from rubber and chemical factories.	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
35. Dibromochloropropane	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
36. Dinoseb	Runoff from herbicide used on soybeans and vegetables.	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
37. Diaquat	Runoff from herbicide use.	Some people who drink water containing diaquat in excess of the MCL over many years could get cataracts.
38. Dioxin, or 2,3,7,8-TCDD	Emissions from waste incineration and other combustion; discharge from chemical factories.	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
39. Endothall	Runoff from herbicide use.	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
40. Endrin	Residue of banned insecticide.	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
41. Epichlorohydrin	Discharge from industrial chemical factories; an impurity of some water treatment chemicals.	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
42. Ethylene dibromide	Discharge from petroleum refineries.	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
43. Glyphosate	Runoff from herbicide use.	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
44. Heptachlor	Residue of banned pesticide.	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
45. Heptachlor epoxide	Breakdown of heptachlor.	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
46. Hexachlorobenzene	Discharge from metal refineries and agricultural chemical factories.	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
47. Hexachlorocyclopentadiene	Discharge from chemical factories.	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
48. Lindane	Runoff or leaching from insecticide used on cattle, lumber, gardens.	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
49. Methoxychlor	Runoff or leaching from insecticides used on fruits, vegetables, alfalfa, livestock.	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
50. Oxamyl, or Vydate	Runoff or leaching from insecticide used on apples, potatoes, and tomatoes.	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
51. PCBs, or Polychlorinated biphenyls	Runoff from landfills; discharge of waste chemicals.	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
52. Pentachlorophenol	Discharge from wood preserving factories.	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
53. Picloram	Herbicide runoff.	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
54. Simazine	Herbicide runoff.	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
55. Toxaphene	Runoff or leaching from insecticide used on cotton and cattle.	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or

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		thyroid, and may have an increased risk of getting cancer.
Volatile organic contaminants		
56. Benzene	Discharge from factories; leaching from gas storage tanks and landfills.	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
57. Bromate	Byproduct of drinking water chlorination	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
58. Carbon tetrachloride	Discharge from chemical plants and other industrial activities.	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
59. Chloramines	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
60. Chlorine	Water additive used to control microbes	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
61. Chlorite	Byproduct of drinking water chlorination	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
62. Chlorine dioxide	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
63. Chlorobenzene	Discharge from chemical and agricultural chemical factories.	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
64. o-Dichlorobenzene	Discharge from industrial chemical factories.	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
65. p-Dichlorobenzene	Discharge from industrial chemical factories.	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
66. 1,2-Dichloroethane	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
67. 1,1-Dichloroethylene	Discharge from industrial chemical factories.	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
68. cis-1,2-Dichloroethylene	Discharge from industrial chemical factories.	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
69. trans-1,2-Dichloroethylene	Discharge from industrial chemical factories.	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
70. Dichloromethane	Discharge from pharmaceutical and chemical factories.	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
71. 1,2-Dichloropropane	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
72. Ethylbenzene	Discharge from petroleum refineries.	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
73. Haloacetic acids, or HAA	Byproduct of drinking water disinfection.	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
74. Styrene	Discharge from rubber and plastic factories; leaching from landfills.	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
75. Tetrachloroethylene	Discharge from factories and dry cleaners.	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
76. 1,2,4-Trichlorobenzene	Discharge from textile-finishing factories.	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
77. 1,1,1-Trichloroethane	Discharge from metal degreasing sites	Some people who drink water containing 1,1,1-trichloroethane in ex-

	and other factories.	cess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
78. 1,1,2-Trichloroethane	Discharge from industrial chemical factories.	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
79. Trichloroethylene	Discharge from metal degreasing sites and other factories.	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
80. TTHMs, or total trihalomethanes	By-product of drinking water chlorination.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
81. Toluene	Discharge from petroleum factories.	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
82. Vinyl chloride	Leaching from PVC piping; discharge from plastics factories.	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
83. Xylenes	Discharge from petroleum factories; discharge from chemical factories.	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

## Where:

AL = Action level  
 MCL = Maximum contaminant level  
 MCLG = Maximum contaminant level goal  
 MFL = Million fibers per liter  
 MRDL = Maximum residual disinfectant level  
 MRDLG = Maximum residual disinfectant level goal  
 mrem/yr = millirems per year, a measure of radiation absorbed by the body  
 n/a = Not applicable  
 NTU = Nephelometric turbidity units  
 pCi/l = picocuries per liter, a measure of radioactivity  
 ppm = parts per million, or milligrams per liter, mg/l  
 ppb = parts per billion, or micrograms per liter, µg/l  
 ppt = parts per trillion, or nanograms per liter  
 ppq = parts per quadrillion, or picograms per liter  
 TT = Treatment technique

(e) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the report shall identify each separate distribution system. Alternatively, a system may produce separate reports tailored to include data for each service area or use another mechanism to clearly indicate the detections from the various water sources.

(f) A table shall clearly identify the data indicating violations of MCLs or treatment techniques, and the report shall contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the applicable language from Table B above for the contaminant that has a violation:

(g) For detected unregulated contaminants for which monitoring is required, except *Cryptosporidium*, the table shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reason for monitoring for unregulated contaminants.

(4) Information on *Cryptosporidium*, radon, and other contaminants:

(a) If the system has performed monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of 40 CFR 141.143, and the monitoring indicates that *Cryptosporidium* may be present in the source water or the finished water, the report shall include:

1. A summary of the results of the monitoring; and
2. An explanation of the significance of the results.

(b) If the system has performed monitoring for radon that indicates that radon may be present in the finished water, the report shall include:

1. A summary of the results of the monitoring; and
2. An explanation of the significance of the results.

(c) If the system has performed additional monitoring that indicates the presence of another contaminant in the finished water, a

system may [shall] report results that may indicate a health concern. The system shall contact the Safe Drinking Water Hotline, 800-426-4791, to determine if EPA has proposed an NPDWR or issued a health advisory for that contaminant. A detection above a proposed MCL or health advisory level indicates a possible health concern. For that contaminant, the report shall include:

1. The results of the monitoring; and
2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(5) Compliance with 401 KAR 8:010 to 401 KAR 8:550: In addition to the requirements of subsection (3)(f) of this section, the report shall note a violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, a potential adverse health effect, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data;

(b) Filtration and disinfection prescribed by 401 KAR 8:150. For a system that failed to install adequate filtration or disinfection equipment or processes, or had a failure of the filtration or disinfection equipment or processes that constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(c) Lead and copper control requirements prescribed by 401 KAR 8:300. For a system that fails to take one (1) or more actions prescribed by 401 KAR 8:300, Sections 3(5), 4, 5, 6, or 7, the report shall include the applicable language of subsection (3)(f) of this section for lead, copper, or both.

(d) Treatment techniques for acrylamide and epichlorohydrin prescribed by 401 KAR 8:100, Section 2. For a system that violates the requirements of 401 KAR 8:100, Section 2, the report shall include the relevant language from subsection (3)(f) of this section.

(e) Recordkeeping of compliance data.

(f) Special monitoring requirements of 401 KAR 8:250, Section 14,

and 401 KAR 8:440; and

(g) Violation of a term of a variance, and exemption, or an administrative or judicial order.

(6) Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued under 401 KAR 8:060, the report shall contain:

- (a) An explanation of the reason for the variance or exemption;
- (b) The date on which the variance or exemption was issued;
- (c) A brief status report on the steps the system is taking to install treatment, find an alternative source of water, or otherwise comply with the terms and schedules of the variance or exemption; and
- (d) A notice of opportunity for public input in the review or renewal of the variance or exemption.

(7) Additional information.

(a) The report shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language of subparagraphs 1 through 3 of this paragraph, or a system may use its own comparable language. The report shall include the language of subparagraph 4 of this paragraph, as a separate paragraph.

1. The sources of drinking water, both tap water and bottled water, include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and may pick up substances resulting from the presence of animals or from human activity.

2. Contaminants that may be present in source water include:

a. Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

b. Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

c. Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.

d. Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.

e. Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

3. To ensure that tap water is safe to drink, U.S. EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water that shall provide the same protection for public health.

4. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects may be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(b) The report shall include the telephone number of the owner, operator, or designee of the community water system as a source of additional information about the report.

**(c) If a system has a significant proportion of non-English speaking residents, the system shall include in the report information in the appropriate language regarding the importance of the report or contain a telephone number or address where non-English speaking residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.**

(d) The report shall include information, including time and place of regularly scheduled board meetings, about opportunities for public participation in decisions that may affect the quality of the water.

(e) [(d)] A system may include additional information deemed necessary for public education consistent with, and not detracting from, the purpose of the report.

Section 3. Additional Health Information. (1) A report shall prominently display the following language as a separate paragraph: "Some

people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791)."

(2) A system that detects arsenic at levels above twenty-five (25) µg/l, but below the MCL shall:

(a) Include in its report a short information statement about arsenic, using language such as: "EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations."; or

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(3) A system that detects nitrates at levels above five (5) mg/l [µg/l], but below the MCL shall:

(a) Include a short informational statement about the impacts of nitrate on children using language such as: "Nitrate in drinking water at levels above ten (10) ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."; or

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(4) A system that detects lead above the action level in more than five (5) percent, and up to and including ten (10) percent, of homes sampled shall:

(a) Include a short informational statement about the special impact of lead on children using language such as: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline, 800-426-4791."; or

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(5) A community water system that detects TTHM above 0.080 mg/L, but below the MCL in 401 KAR 8:500 as an annual average, monitored and calculated under the provision of 401 KAR 8:500, shall include health effects language prescribed by Section 2(3)(d) of this administrative regulation.

Section 4. Report Delivery and Recordkeeping. (1) Except as provided in subsection (6) of this section, a community water system shall mail or otherwise directly deliver a copy of the report to each customer.

(2) The system shall make a good-faith effort to reach consumers who do not get water bills. An adequate good-faith effort shall be tailored to the consumer who is served by the system, but is not a bill-paying customer, such as a renter or worker. The system shall describe the good-faith efforts either in the certification required in subsection (3) of this section or when the report is submitted to the cabinet. A good-faith effort to reach consumers may be a mix of methods appropriate to the particular system, such as:

- (a) Posting the report on the Internet;
- (b) Mailing to postal patrons in metropolitan areas;
- (c) Advertising the availability of the report in the news media;
- (d) Publishing the report in a local newspaper;
- (e) Posting in a public place such as a cafeteria or lunch room of a public building;
- (f) Delivering of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;
- (g) Delivering the report to a community organization; or
- (h) Other means that accomplish the goal of notifying the con-

sumer.

(3)(a) Within fourteen (14) days of distributing the report to its customers, but no later than the date specified in Section 1(2)(a) of this administrative regulation, the community water system shall also mail a copy of the report and the certification required in paragraph (b) of this subsection to the cabinet at the following address: Division of Water, Drinking Water Branch, Attn: CCR, 14 Reilly Road, Frankfort, Kentucky 40601. The system shall include a copy of the report and certification for each PWSID the system has, and shall include the name of the system and its PWSID number on all submittals. The system shall not mail the report or the certification to the cabinet until it has distributed the report to its customers.

(b) Certification.

1. The community water system shall mail a certification to the cabinet by January 19, 2000, for the first report, by October 1 for the second report, and by July 1 annually thereafter for subsequent reports.

2. The certification shall contain the following documentation. If the required documentation has been previously submitted, a system need not resubmit that information. The certification shall include the typed or printed name and title of the person responsible for the overall operation or management of the system, and shall be signed by that person.

a. The following two (2) statements that are true for the system. If the system cannot make the true statement, then it shall qualify the statement to make it true for the system:

(i) "The report was prepared and distributed according to the requirements for our system"; and

(ii) "The report contains information that is correct and consistent with the compliance monitoring data previously submitted to the Division of Water."

b. Documentation of how and when the report was distributed to its customers. If a system serves a population of less than 10,000 and used the mailing waiver pursuant to subsection (6)(a) of this section, it shall include a copy of the report from the local newspaper, showing the date the report was printed;

c. If the system serves a population of less than 10,000, and used the mailing waiver allowed in subsection (6)(a) of this section, a description of how the system qualified for the mailing waiver by demonstrating that it performed all three (3) actions required for the mailing waiver;

d. If the system serves a population of less than 500 and used the waiver allowed in subsection (6)(b) of this section, documentation of how it notified its customers that the report was available; and

e. A description of the system's good-faith efforts to reach its non-bill-paying customers, as required in subsection (2) of this section;

(4) A community water system shall make its report available to the public upon request.

(5) By the date specified in Section 1 of this administrative regulation, a community water system serving 100,000 or more persons shall post its current year's report to a publicly-accessible site on the Internet. The version that is posted shall be identical to the report that is made available to the customers, to the extent allowed by the computer or electronic system.

(6) Waiver. A system shall document in the certification required in subsection (3)(b) of this section how it qualified for the waiver, by showing how it performed either the three (3) actions in paragraph (a) of this subsection, or the action required in paragraph (b) of this subsection, as applicable for the system's size.

(a) A community water system that serves fewer than 10,000 persons shall be waived from the mailing requirement in subsection (1) of this section if the system performs the following three (3) actions before the date specified in Section 1 of this administrative regulation:

1. Publishes the report in at least one (1) newspaper serving the area in which the system is located. The version that is printed in the newspaper shall be the same as is submitted to the cabinet, to the extent allowed by the newspaper;

2. Informs the customers that the reports will not be mailed unless requested, either in the newspapers in which the reports are published, or by another means approved by the cabinet by which the customers are notified; and

3. Makes the reports available to the public upon request.

(b) A system that serves no more than 500 persons may forego

the requirements of paragraph (a)1 and 2 of this subsection if it provides notice to its customers at least once per year before the date specified by Section 1 of this administrative regulation by mail, door-to-door delivery, or by posting in an appropriate location that the report is available upon request.

(7) A community water system shall retain a copy of its consumer confidence report and certification for at least three (3) years.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 1, 2001

FILED WITH LRC: February 1, 2001 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates into Kentucky's administrative regulations the federal requirements in 40 CFR 141.151 to 141.155 on Consumer Confidence Reports. The federal regulation was promulgated by the U.S. Environmental Protection Agency in August 1998. It establishes new reporting requirements for community water systems: every community water system is to prepare and distribute to their customers an annual report. The report is to contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations that are "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating the administrative regulations in this chapter. In August 1998, the national primary drinking water regulations were amended to add the regulation for Consumer Confidence Reports, at 40 CFR 141.150 to 141.155. To maintain Kentucky's "primacy" the cabinet is required to promulgate this administrative regulation that contains the requirements of the new federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky's administrative regulations the provisions of the federal regulation, thus maintaining Kentucky's program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires that a community water system must prepare and distribute to its customers an annual report on the quality of the water provided by the system, thus assuring the customers that the water they receive meets the federal and state requirements, or notifying them of any violations. This administrative regulation will be a part of the cabinet's program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: Not applicable since this is a new administrative regulation. This administrative regulation is being amended after hearing in several places: In Section 2(4)(c), the community water system may include in its consumer confidence report monitoring data that may indicate a possible health concern, instead of being required to include the information; In Section 2(7)(c), a new paragraph (c) is added to state that if a system has a significant proportion of non-English speaking residents, it shall include in the report information in the appropriate language regarding the importance of the report or contain a telephone number or address where non-English speaking residents may contact the system to obtain a translated copy of the report or assist



tance in the appropriate language; In Section 3(3), the typographical error µg/l is being changed to mg/l.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new administrative regulation. These amendments are necessary to: Correct a provision that the federal regulation encouraged, but did not require; Add a provision that was required by the federal regulation; Correct a typographical error.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all community water systems. There are about 465 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Systems are required to prepare and distribute to their customers an annual report on the quality of the drinking water delivered to their customers. Systems shall also submit a copy of the report to the cabinet when it is distributed to their customers. The reports shall contain information on the amount of contaminants that are detected in their drinking water, and shall characterize the risks from exposure to the detected contaminants. Some systems are able to prepare the reports in-house using assistance from the Kentucky Rural Water Association or other software packages that are available; some systems are hiring a consulting firm to prepare the report, still other smaller rural systems are having their reports prepared by an outside agency. Depending on the population served by the system, the system shall either mail or otherwise hand-deliver the report to their customers, publish the report in a local newspaper, or notify customers that the report is available upon request. The systems shall also submit to the cabinet a certification that the report was prepared and distributed to its customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the Division of Water. The certification shall also contain information on how and when the report was distributed, shall describe the system's good-faith efforts to reach the nonbill-paying customers, and shall include a copy of the report in the newspaper showing the date the report was printed, if the system used that mailing waiver. The amendments to this administrative regulation after the public hearing will not have a significant impact on a community water system. The federal guidance document provides applicable language to use in its consumer confidence report if a community water system determines that it has a significant proportion of non-English residents. There is no significant impact as a result of correcting the typographical error. The community water systems will be satisfied that they will not have to include monitoring data that may indicate a possible health concern.

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

(a) Initially: Any costs incurred by a community water system are an impact of the federal regulation, and are required of all community water systems, regardless of Kentucky's promulgating this administrative regulation. Most systems are preparing the reports in-house, with assistance from the Kentucky Rural Water Association or computer programs available to them. Those costs are relatively low, using available personnel. Some systems are having the reports prepared by consultants, at additional costs to them. For the small rural system, there are agencies available to help them prepare their reports at no cost. The majority of the costs involved are in the distribution of the reports. Systems that serve a population of more than 10,000 must mail their reports to their bill-paying customers, or otherwise hand-deliver the reports. The net costs will depend on the number of billed customers, but that requirement represents a major cost to systems. Some systems have reported that the costs for mailing the report have been \$300 to \$700; costs are still more for larger systems that must mail the reports to more customers. However, those larger systems

have traditionally mailed annual reports of some kind to their customers, so this does not represent a new cost. Systems that serve a population of 10,000 or less may publish the report in a local newspaper, but that can cost up to \$400 or more, depending on the size of the report, the size of the print used, and the circulation of the local paper. They must also notify their customers that the report will not be mailed unless requested. Some systems are making that notification in the newspaper itself, others are doing so on the monthly bills. Systems that serve a population of 500 or less are only required to notify their customers that the report is available. There is little cost associated with that since most of them can notify by using a posting, or sending the notification with a monthly bill. Finally, systems that serve a population of greater than 100,000 must also put the reports on a publicly accessible Internet site. That cost is relatively small, since those systems already have a web-site that they use, and personnel who are able to post the information.

(b) On a continuing basis: Same as the initial costs. If a system increases its population served to above the "trigger points" of 10,000 or 500, the system will need to distribute the report appropriately for the new population size. That could represent additional costs for the system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement other new provisions of the Safe Drinking Water Act.

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

(9) TIERING: Is tiering applied? Yes. While all community water systems are required to prepare and distribute an annual report to their customers, systems that serve a population of less than 10,000 may use a waiver of the requirement to mail or otherwise hand-deliver the report to all customers. Systems that serve less than 10,000 may print the report in a local newspaper instead of mailing them to all customers, if they also notify their customers that the report will not be mailed unless requested, and then also make the reports available upon request. Systems that serve a population of less than 500 may be further relieved of distribution requirements by just notifying their customers that the report is available upon request.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.151 to 141.155, which is Subpart O.

2. State compliance standards. 401 KAR 8:075.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires community water systems to prepare and distribute to their customers an annual report on the quality of the drinking water delivered to their customers. The federal regulation contains requirements on the content of the reports, and requirements as to how the report is to be delivered to a system's customers, depending on the population served by the system.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes; some provisions relating to reporting and record keeping requirements are additional requirements, and the regulation requires that the report and the certification be submitted to the cabinet by the same date, July 1 of each year.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional re-

porting requirements will allow the cabinet to track compliance with this administrative regulation, thus ensuring the system's customers, who are citizens of the Commonwealth, that they will receive the required reports on the quality of their drinking water by the specified dates. The requirement that the report and the certification be submitted by the same date is to simplify the reporting requirements. The two reporting dates have been a constant source of confusion for the operators, and has resulted in violations being issued because the operators missed the first reporting date. Having one reporting date for both the report and the certification will simplify reporting for the community water systems. The additional requirement on the potential health risks for possible contaminants is to notify citizens of the Commonwealth of possible additional contaminants in their drinking water.

## 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. This administrative regulation will affect all community water systems, most of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to those affected public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): Any expenditures are an impact of the federal regulation, and are required of all community water systems, regardless of Kentucky's promulgating this administrative regulation. Every community water system is required to prepare a report on the quality of its water, using the results of the analytical tests that they have already performed. Most systems are preparing the reports in-house, with assistance from the Kentucky Rural Water Association or computer programs available to them. Those costs are relatively low, using available personnel. Some systems are having the reports prepared by consultants, at additional costs to them. For the small rural system, there are agencies available to help them prepare their reports at no cost. Some systems are also using this opportunity to notify their customers of other information, beyond what is required in the report. Examples are additional public-relations and billing information. The majority of the costs involved are in the distribution of the reports. Systems that serve a population of more than 10,000 must mail their reports to their bill-paying customers, or otherwise hand-deliver the reports. The net costs will depend on the number of billed customers, but that requirement represents a major cost to systems. Some systems have reported that the costs for mailing the report have been \$300 to \$700; costs are still more for the larger systems. Systems that serve a population of less than 10,000 may publish the report in a local newspaper, but that can cost up to \$400 or more, depending on the size of the report, the size of the print used, and the circulation of the local paper. They must also notify their customers that the report will not be mailed unless requested. Some systems are making that notification in the newspaper itself, others are doing so on the monthly bills. Systems that serve a population of less than 500 are required only to notify their customers that the report is available; there is little cost associated with that since most of them can notify by using a posting, or sending the notification with a monthly bill. Finally, systems that serve a population of greater than 100,000 must also put the reports on a publicly accessible Internet site. The cost there is relatively small, since those systems already have a web-site that they use, and personnel who are able to post the information.

Other Explanation: None

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water  
(Amended After Hearing)

## 401 KAR 8:500. Disinfection by-products.

RELATES TO: KRS ~~224.10-100~~, ~~224.10-110~~ [Chapter 224], 40 CFR Part 141, ~~141.24~~, ~~141.30~~, [40 CFR] 142.60 [(+995)]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR ~~141.24(e)~~, 141.29, 141.30 [(+995)], 42 USC[A] 300f, 300g, ~~300h~~, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility. This administrative regulation sets forth the requirements for by-products of disinfectants used to purify drinking water. These by-products may, when consumed over a long period of time, cause adverse health effects [affects]. This administrative regulation stipulates who shall test for the by-products and what actions are to be taken when they are found. This administrative regulation is being amended to remove from the applicability section, in phases, those systems that will be subject to the new federal regulations on disinfectant residuals, disinfection by-products, and disinfection byproduct precursors, 401 KAR 8:510. This administrative regulation conforms to, and is no more stringent than, federal regulations.

Section 1. Applicability. (1)(a) This administrative regulation shall apply to a community water system that uses as its source surface water or ground water under the direct influence of surface water and that serves a population of 10,000 persons or more until December 31, 2001. The system shall then comply with 401 KAR 8:510.

(b) This administrative regulation shall apply to a community water system that uses only ground water not under the direct influence of surface water and serves a population of 10,000 people or more until December 31, 2003. The system shall then comply with 401 KAR 8:510.

(c) After December 31, 2003, this administrative regulation shall not apply to a community water system.

(2)(a) Each community public water system serving 10,000 or more persons that adds a disinfectant as part of its treatment process shall monitor for trihalomethanes.

(b) ~~[The cabinet may provide technical assistance in sampling and sample analysis for trihalomethanes:]~~ Consecutive community water systems, if [where] there is a seller and one (1) or more purchasers of water and the combined population of the systems involved exceeds 10,000 or more persons, shall ~~[be required to]~~ sample for trihalomethanes, pursuant to this administrative regulation, as follows:

1. ~~[(1)]~~ Seller responsible. If a buyer does not practice booster disinfection or alter the water, the seller shall be responsible for monitoring. Sampling shall be performed pursuant to this administrative regulation at a point in the buyer's distribution system which reflects the longest period of retention.

2. ~~[(2)]~~ Buyer responsible. If a buyer practices booster disinfection or alters the water, monitoring shall be the responsibility of the buyer and sampling shall be performed pursuant to this administrative regulation. The raw water sample shall be taken at the point of entry into the system of the buyer and ahead of the booster chlorination point.

(c) ~~[(3)]~~ Public notification. A public water system determined by the cabinet to be the major contributor to violations of maximum contaminant levels for total trihalomethanes shall notify the public in accordance with 401 KAR 8:070.

Section 2. Sampling Frequency. A public water system [systems] serving more than 10,000 persons shall monitor quarterly for triha-

lomethanes.

Section 3. Sampling Locations. Samples shall be taken on the following basis:

- (1) Raw water. One (1) untreated or raw water sample to determine interference factors.
- (2) Normal usage points. Three (3) samples shall be taken from a free-flowing tap at points in the distribution system which reflect normal average daily usage or turnover.
- (3) Maximum residence point. One (1) sample shall be taken from a free-flowing tap in the system which reflects the longest time period of retention within the distribution system, but shall not be taken on a dead end.
- (4) Time frame. Each quarterly sample shall be taken in the same week and at the same designated sample points during each quarter.
- (5) Total samples. The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.
- (6) Multiple plant operations. In multiple plant operations, sampling shall reflect the distribution from each plant.

Section 4. Maximum Trihalomethane Limits. The maximum contaminant level for total trihalomethanes, or ~~[(TTHMs, shall be)]~~ 0.10 milligrams per liter (mg/l), which shall be the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane or bromoform, and trichloromethane or chloroform.

(1) How computed. The results of all analyses performed each quarter shall be averaged and reported in a format supplied or approved by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated by the cabinet.

(2) Running average. Compliance shall be determined by a running annual average of the four (4) most recent quarterly samples.

Section 5. Reduction in Sampling Frequency. Upon receipt of a written request the requirement of a sampling frequency of four (4) samples-per-quarter per year for each treatment plant used by the system may be reduced by the cabinet to a minimum of one (1) sample for TTHMs per quarter. A reduction in frequency shall only be considered if, after one (1) full year of monitoring in accordance with the original schedule, it has been demonstrated that the water delivered to consumers is below the TTHM MCL of 0.10 mg/l. The minimum single sample for TTHM shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHM, and is confirmed by at least one (1) check sample, the system shall comply with the four (4) samples-per-quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring four (4) samples per quarter.

Section 6. Increase in Sampling Frequency. If analytical results from quarterly sampling show a TTHM arithmetic sum above acceptable limits, the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

Section 7. Sampling and Analytical Methods. (1) Approved methods. Sampling and analyses conducted pursuant to this administrative regulation shall be conducted in accordance with 40 CFR 141.24(e) and 141.30(e), in effect on July 1, 2000 ~~[1999]~~, ~~[1995; hereby]~~ adopted without change in Section 12 of this administrative regulation.

(2) Certified laboratories. The cabinet will only accept analytical data, for TTHM monitoring and analysis, from a laboratory that has ~~[laboratories which have]~~ participated in the U.S. Environmental Protection Agency performance evaluation program and that has ~~[which have]~~ been certified by the cabinet pursuant to 401 KAR 8:040 or the Environmental Protection Agency.

Section 8. Total Trihalomethane Levels Exceeded. If the average annual TTHM level is exceeded, the community water system shall

notify the public pursuant to 401 KAR 8:070.

Section 9. Requirements for Making Significant Treatment Modifications. Before a system makes a [any] significant modification in its existing treatment process [in-order] to achieve compliance with this administrative regulation, the system shall obtain written cabinet approval of a detailed plan for the modification. A plan to modify a disinfection practice shall require the system, at a minimum, to:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;
- (2) Evaluate its existing treatment practices, consider improvements that minimize disinfectant demand and optimize finished water quality throughout the distribution system;
- (3) Provide baseline data from water quality surveys of the distribution system. The data shall include the monitoring results for:
  - (a) Total coliform and fecal coliform bacteria;
  - (b) Fecal streptococci;
  - (c) Standard plate counts at thirty-five (35) degrees Celsius and twenty (20) degrees Celsius;
  - (d) Phosphate;
  - (e) Ammonia nitrogen; and
  - (f) Total organic carbon;
- (4) Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications;
- (5) Demonstrate an active disinfectant residual throughout the distribution system during and after the modification; and
- (6) Provide additional monitoring for chlorate, chlorite, and chlorine dioxide, if chlorine dioxide is used as a disinfectant.

Section 10. Self-monitoring Reporting Requirements. Each laboratory performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification pursuant to 401 KAR 8:040. Public water systems shall submit results to the cabinet, within ten (10) days following the end of the compliance period for which the analysis was completed.

Section 11. Variance Procedures for Total Trihalomethanes. (1) When considered. Applications for a variance from the maximum acceptable contaminant level, or ~~[(MCL, )]~~ of 0.10 mg/l shall ~~[will]~~ be considered by the cabinet if the public water system making application presents evidence that:

- (a) The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available;
  - (b) The best treatment method is not technically appropriate or technically feasible for that system; and
  - (c) Only marginal reduction in TTHM levels would be realized if the treatment methods specified in subsection (2) of this section were utilized.
- (2) Best technology. The following technology, treatment techniques, or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered the best available:
- (a) The use of chloramines as an alternate or supplemental disinfectant or oxidant;
  - (b) The use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;
  - (c) Improved clarification for THM precursor reduction;
  - (d) Moving the point of chlorination to reduce TTHM formation and, if necessary, substituting chloramines, chlorine dioxide, or potassium permanganate for the use of chlorine as a preoxidant; and
  - (e) The use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently, at dosages not to exceed ten (10) mg/l on an annual average basis.
- (3) When cabinet will grant variance. The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques are not available and effective, will consider a variance under the following conditions:
- (a) Granting the variance will not result in an unreasonable risk to health; and
  - (b) The public water system proposes a compliance schedule,

within one (1) year of the date the variance is granted, which examines the technological, economic, and reduction feasibility of one (1) or more of the following treatment methods:

1. Introduction of off-line water storage for THM precursor reduction;
2. Aeration for TTHM reduction, where geographically and environmentally appropriate;
3. Introduction of clarification where not currently practiced;
4. Consideration of alternate sources of raw water; and
5. Use of ozone as an alternate or supplemental disinfectant or oxidant.

(c) The public water system implements quality control measures the cabinet may require during the period ending on the date it complies with this administrative regulation.

(d) If the cabinet determines that a treatment method identified in paragraph (b) of this subsection is technically feasible, economically reasonable, and will achieve TTHM reductions commensurate with the costs incurred with the installation and use of the treatment method, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule. The cabinet's decision shall be based upon studies performed by the system and other information submitted to the cabinet by the system in accordance with 401 KAR 8:060.

(4) The cabinet shall not require a system to install or use a treatment method not described in this section to obtain or maintain a variance from the TTHM regulation or in connection with any variance compliance schedule.

Section 12. Federal Regulations Adopted Without Change. 40 CFR 141.24(e) and 141.30(e), as in effect on July 1, 2000, are adopted without change. The provisions of this administrative regulation relating to analyses and monitoring requirements for total trihalomethanes shall be governed by the federal regulations.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 1, 2001

FILED WITH LRC: February 1, 2001 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for byproducts of disinfectants used to purify drinking water. These byproducts may, when consumed over time, cause adverse health effects. This administrative regulation stipulates which systems shall test for the byproducts and what actions are to be taken when they are found.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating the administrative regulations in this chapter. In December 1998, the national primary drinking water regulations were amended to add new requirements for disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors in 40 CFR 141.130 to 141.135. The new requirements also "phased out" portions of the old federal regulation, 40 CFR 141.30. To maintain Kentucky's "primacy" the Cabinet is required to promulgate this administrative regulation that also phases out the provisions of the old disinfection byproducts regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky's administrative regulations the provisions of the federal regulation, thus maintaining Kentucky's program for the purification of

water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for larger public water systems that disinfect their water, thus maintaining its program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: The amendments to this administrative regulation specify for community water systems that serve a population of greater than 10,000 and that use as their source surface water or ground water under the direct influence of surface water, the administration regulation will apply only until December 31, 2001. After that date, the provisions of 401 KAR 8:510 shall apply. Similarly, for a community water system that serves a population of greater than 10,000 and that uses as its source ground water not under the direct influence of surface water, this administrative regulation shall apply until December 31, 2003. After that date, the provisions of 401 KAR 8:510 shall apply. This administrative regulation is being amended after the public hearing to make two changes. The first change is in the RELATES TO: portion at the beginning of this administrative regulation. The reference to KRS Chapter 224 is being changed to cite the specific statutes that are the authorizing statutes for the Drinking Water Program: KRS 224.10-100, 224.10-110. The second change is in Section 7(1). The date of the CFR reference material is being changed from July 1, 1999 to July 1, 2000.

(b) The necessity of the amendment to this administrative regulation: The federal regulations were amended in December 1998, therefore to maintain "primacy," the Cabinet is required to amend its regulations accordingly.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments will be a part of the Cabinet's program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will provide for purification of water for public use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public water systems that serve a population of more than 10,000. There are about 100 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendments will "phase out" the applicability of this administrative regulation to specific systems, depending on their source of water. As a system is removed from the applicability of this administrative regulation, the system will be subject to the new additional requirements in 401 KAR 8:510. Any impact to the system would be a result of the new administrative regulation. There is no impact on the regulated community as a result of these two minor changes in this administrative regulation.

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

(a) Initially: There are no initial costs associated with the phasing-out of this administrative regulation. Any costs incurred would be as a result of a public water system being subject to the new federal regulation.

(b) On a continuing basis: There are no continuing costs associated with the phasing-out of this administrative regulation. Any costs incurred would be a result of a public water system being subject to the new federal regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the Cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the Cabinet's program is no less stringent than the federal program, and the Cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the Cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as is outlined in other administrative regulations of this chapter.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees, although a public water system may elect to raise the rates it charges its customers for providing water.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies only to those systems that serve a population of greater than 10,000. The amendments will be phased in, depending on the source of the system's water: systems using surface water or ground water under the direct influence of surface water are subject to this administrative regulation until December 31, 2001; systems using ground water not under the direct influence of surface water are subject to this administrative regulation until December 31, 2003.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.12, 141.30.

2. State compliance standards. 401 KAR 8:500.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation contains the maximum contaminant level for total trihalomethanes for public water systems that serve a population of greater than 10,000. The MCL applies until December 31, 2001 for a system that uses as its source surface water or ground water under the direct influence of surface water, and until December 31, 2003 for a system that uses as its source ground water not under the direct influence of surface water.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### 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. This administrative regulation will affect some public water systems, many of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to those affected public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There are no costs associated with phasing out the requirements of this administrative regulation. The costs would be associated with the promulgation of the new administrative regulation.

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

#### 401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 141.140 to 141.144, 142.60

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.20, 141.30, 141.64, 141.65, 141.130 to 141.135, 141.140 to 141.144, 42 USC 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semi-public use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility. This administrative regulation establishes maximum contaminant levels for total trihalomethanes and haloacetic acid five (5) to limit the levels of known and unknown disinfection byproducts, which may have adverse health effects. A provision in Section 2 of this administrative regulation relating to consecutive systems is in addition to the federal requirements. The provision clarifies how Kentucky will implement requirements for systems that purchase their water from another system. It is necessary because the federal regulation does not directly address this issue. Kentucky has required monitoring for total trihalomethanes in consecutive systems under 401 KAR 8:500, and this administrative regulation makes the producing system responsible for the monitoring and most of the treatment. However, if the producing system is not able to eliminate the exceedance in the purchasing system, then there is a provision to require the purchasing system to make changes deemed necessary to eliminate the problem. This provision is necessary because public water systems that sell water should not be responsible for improper maintenance by the purchasing system.

Section 1. Applicability. (1) This administrative regulation shall be considered a national primary drinking water regulation.

(2) This administrative regulation establishes criteria under which:

(a) A community water system and a nontransient noncommunity water system that add a chemical disinfectant as a part of the drinking water treatment process shall modify their practices to meet maximum contaminant levels, or MCLs, and maximum residual disinfectant levels, or MRDLs, in Section 3 of this administrative regulation and shall meet the treatment technique requirements for disinfection byproduct precursors in Section 9 of this administrative regulation; and

(b) A transient noncommunity water system that uses chlorine dioxide as a disinfectant or oxidant shall modify its practices to meet the MRDL for chlorine dioxide in Section 3 of this administrative regulation.

(3) This administrative regulation establishes MCLs for TTHM and HAA5 and treatment technique requirements for disinfection byproduct precursors to limit the levels of known and unknown disinfection byproducts, which may have adverse health effects.

(4) Control of disinfectant residuals. The cabinet recognizes that the addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs in Section 3 of this administrative regulation, a system may increase the residual disinfectant level in the distribution system of chlorine or chloramines, but not chlorine dioxide, to a level and for the amount of time necessary to protect public health, to address a specific microbiological contamination problem caused by circumstances such as:

- (a) A distribution line break;
- (b) Storm run-off event;
- (c) Source water contamination event; or
- (d) Cross-connection event.

Section 2. Compliance Dates. (1) Community water system and nontransient noncommunity water system. Unless otherwise noted, a community water system and a nontransient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:

(a) If the system serves 10,000 or more persons: Beginning January 1, 2002;

(b) If the system serves fewer than 10,000 persons or if the system uses only groundwater not under the direct influence of surface water: Beginning January 1, 2004.

(2) Transient noncommunity water system. Unless otherwise noted, a transient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:

(a) If the system serves 10,000 or more persons and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2002; and

(b) If the system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, or the system uses only groundwater not under the direct influence of surface water and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2004.

(3) A system that is installing GAC or membrane technology to comply with the MCLs for disinfection byproducts may apply to the cabinet for an extension of up to twenty-four (24) months past the dates in subsections (1) and (2) of this section, but not beyond December 31, 2003. In granting the extension, the cabinet shall set a schedule for compliance and may specify any interim measure that the system shall take. Failure to meet the schedule or interim treatment requirements shall constitute a violation of this administrative regulation.

(4) Consecutive systems. Consecutive water systems shall monitor for trihalomethanes and HAA5 as follows:

(a) For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

(b) Producers.

1. A public water system that produces water and that provides water to another system shall be responsible for monitoring throughout the joint distribution system, which shall consist of the distribution systems of both [include] the producing system and all purchasing systems. Monitoring shall be performed pursuant to this administrative regulation at a point in the joint [purchaser's] distribution system that reflects the longest period of retention.

2. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system's water. A monitoring plan for total trihalomethanes and HAA5s shall be submitted by all producing systems and shall be approved by the cabinet pursuant to Section 6(6) of this administrative regulation.

(c) Purchasers.

1. A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for TTHM or HAA5 anywhere in its [the] distribution system. The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination, and shall be approved by the cabinet before the altered practices begin.

2. A purchasing system shall cooperate in the development of a monitoring plan required from the producing system under paragraph (b) of this subsection. A purchasing system shall monitor for maximum residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled as specified in 401 KAR 8:200. [- and shall submit a monitoring plan for the monitoring pursuant to Section 6(6) of this administrative regulation.]

Section 3. Maximum Levels. (1) Maximum contaminant level. The maximum contaminant level or MCL for disinfection byproducts shall be:

(a) Total trihalomethanes, or TTHMs: 0.080 mg/L;

(b) Haloacetic acids five, or HAA5: 0.060 mg/L;

(c) Bromate: 0.010 mg/L; and

(d) Chlorite: one and zero-tenths (1.0) mg/L.

(2) Maximum residual disinfectant level.

(a) The maximum residual disinfectant level, or MRDL, shall be:

1. Chlorine: four and zero-tenths (4.0) mg/L as  $\text{Cl}_2$ ;

2. Chloramines: four and zero-tenths (4.0) mg/L as  $\text{Cl}_2$ ; and

3. Chlorine dioxide: zero and eight-tenths (0.8) mg/L as  $\text{ClO}_2$ .

(b)1. For chlorine and chloramines, a public water system shall be in compliance with the MRDL if the running annual average of monthly averages of samples taken in the distribution system computed quarterly, is less than or equal to the MRDL.

2. For chlorine dioxide, a public water system shall be in compliance with the MRDL if daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL.

(c) The MRDL shall be enforceable in the same manner as are maximum contaminant levels.

Section 4. Best Available Technology. (1) Disinfection byproducts. The following shall be the best technology, treatment techniques, or other means available for achieving compliance with the MCLs for disinfection byproducts in Section 3 of this administrative regulation:

(a) TTHM: Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant;

(b) HAA5: Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant;

(c) Bromate: Control of ozone treatment process to reduce production of bromate; and

(d) Chlorite: Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

(2) Disinfectant residuals. The best technology, treatment techniques, or other means available for achieving compliance with the MRDL in Section 3 of this administrative regulation shall be:

(a) Control of treatment processes to reduce disinfectant demand; and

(b) Control of disinfection treatment processes to reduce disinfectant levels.

Section 5. Analytical Requirements. (1) Except as provided in this section, a system shall sample and analyze according to the procedures in 40 CFR 141.131, adopted without change in Section 10 of this administrative regulation.

(2) A system shall have the samples analyzed by a laboratory that has been certified by the U.S. Environmental Protection Agency or the cabinet according to 401 KAR 8:040.

(3) A party approved by the U.S. Environmental Protection Agency or the cabinet shall measure daily chlorite samples at the entrance to the distribution system.

(4) A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using a DPD colorimetric test kit.

(5) Residual disinfectant concentrations, alkalinity, and TOC shall be measured by an operator certified pursuant to 401 KAR 8:030, or a person under the direct supervision of a certified operator.

Section 6. Monitoring Requirements. (1) General requirements.

(a) A system shall take all samples during normal operating conditions.

(b) A system may consider multiple wells drawing water from a single aquifer as one (1) treatment plant for determining the minimum number of TTHM and HAA5 samples required, as approved by the cabinet.

(c) Failure to monitor in accordance with the monitoring plan required in subsection (6) of this section shall be a monitoring violation.

(d) Failure to monitor shall be treated as a violation for the entire period covered by the annual average, if compliance is based on a running annual average of monthly or quarterly samples or averages



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and the system's failure to monitor makes it impossible to determine compliance with an MCL or MRDL.

(e) To qualify for reduced monitoring, a system shall use only data collected under the provisions of this administrative regulation or 40 CFR 141.140 to 141.144.

(2) Monitoring requirements for disinfection byproducts.

(a) TTHMs and HAA5.

1. Routine monitoring. A system shall monitor at the frequency and locations indicated in the following table:

Routine Monitoring Frequency for TTHMs and HAA5		
System Type	Minimum monitoring frequency	Sample location in the distribution system
A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves at least 10,000 persons	Four (4) water samples per quarter per treatment plant.	At least twenty-five (25) percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples shall be taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account the number of persons served, different sources of water, and different treatment methods. <sup>1</sup>
A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves from 500 to 9,999 persons	One (1) water sample per quarter per treatment plant.	Locations representing maximum residence time. <sup>1</sup>
A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves fewer than 500 persons	One (1) sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time. <sup>1</sup> If the sample, or average of annual samples if more than one (1) sample is taken, exceeds the MCL, system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in subparagraph 4 of this paragraph.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	One (1) water sample per quarter per treatment plant.	Location representing maximum residence time. <sup>1</sup>
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One (1) sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time. <sup>1</sup> If the sample, or average of annual samples, if more than one (1) sample is taken, exceeds the MCL, system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in subparagraph 4 of this paragraph for reduced monitoring.

<sup>1</sup>If a system elects to sample more frequently than the minimum required, at least twenty-five (25) percent of all samples collected each quarter, including those taken in excess of the required frequency, shall be taken at locations that represent the maximum residence time in the distribution system.

<sup>2</sup>Multiple wells drawing water from a single aquifer may be considered one (1) treatment plant for determining the minimum number of samples required.

2. A system may reduce monitoring, except as otherwise provided, in accordance with the following table:

Reduced Monitoring Frequency for TTHM and HAA5		
If the system type is:	And the system has monitored at least one (1) year and the	Then the system may reduce monitoring to this level:
System that uses as its source surface water or groundwater under the direct influence of surface water that serves at least 10,000 persons that has a source water annual average TOC level, before treatment, of $\leq 4.0$ mg/L	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One (1) sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
System that uses as its source surface water or groundwater under the direct influence of surface water that serves from 500 to 9,999 persons that has a source water annual average TOC level, before treatment, of $\leq 4.0$ mg/L	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. A system that uses as its source surface water or groundwater under the direct influence of surface water that serves fewer than 500 persons shall not reduce its monitoring to less than one (1) sample per treatment plant per year.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L for two (2) consecutive years, or TTHM annual average $\leq 0.020$ mg/L and HAA5 annual average $\leq 0.015$ mg/L for one (1) year	One (1) sample per treatment plant per three (3) year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three (3) year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

3. A system on a reduced monitoring schedule may remain on that reduced schedule if the average of all samples taken in the year,



for systems that shall monitor quarterly, or the result of the sample, for systems that shall monitor no more frequently than annually, is not more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. A system that does not meet these levels shall resume monitoring at the frequency identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs and 0.045 mg/L for HAA5. For a system that uses only groundwater not under the direct influence of surface water and that serves fewer than 10,000 persons, if either the TTHM annual average is  $>0.080$  mg/L or the HAA5 annual average is  $>0.060$  mg/L, the system shall go to increased monitoring identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L for TTHMs or 0.060 mg/L for HAA5s.

4. A system on increased monitoring may return to routine monitoring if the TTHM annual average is  $\leq 0.040$  mg/L and HAA5 annual average is  $\leq 0.030$  mg/L.

5. The cabinet may return a system to routine monitoring.

(b) Chlorite. A community and nontransient noncommunity water system using chlorine dioxide for disinfection or oxidation shall conduct monitoring for chlorite.

1. Routine monitoring.

a. Daily monitoring. A system shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

b. Monthly monitoring. A system shall take a three (3) sample set each month in the distribution system. Additional routine sampling shall be conducted in the same manner as three (3) sample sets, at the specified locations. The system may use the results of additional monitoring conducted under subparagraph 2 of this paragraph to meet the requirement for monitoring in this clause. The system shall take one (1) sample at each of the following locations:

(i) Near the first customer;

(ii) At a location representative of average residence time; and

(iii) At a location reflecting maximum residence time in the distribution system.

2. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system shall take three (3) chlorite distribution samples at the following locations:

a. As close to the first customer as possible;

b. In a location representative of average residence time; and

c. As close to the end of the distribution system as possible, to reflect maximum residence time in the distribution system.

3. Reduced monitoring.

a. Chlorite monitoring at the entrance to the distribution system required by subparagraph 1a of this paragraph shall not be reduced.

b. Chlorite monitoring in the distribution system required by subparagraph 1b of this paragraph may be reduced to one (1) three (3) sample set per quarter after one (1) year of monitoring if no individual chlorite sample taken in the distribution system under subparagraph 1b of this paragraph has exceeded the chlorite MCL and the system has not been required to conduct monitoring under subparagraph 2 of this paragraph. The system may remain on the reduced monitoring schedule until either any of the three (3) individual chlorite samples taken quarterly in the distribution system under subparagraph 1b of this paragraph exceed the chlorite MCL or the system is required to conduct monitoring under subparagraph 2 of this paragraph. The system shall then revert to routine monitoring.

(c) Bromate.

1. Routine monitoring. A community and nontransient noncommunity water system using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system that uses ozone. A system shall take the sample monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

2. Reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is

less than 0.05 mg/L, based upon representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L, based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system shall resume routine monitoring required by subparagraph 1 of this paragraph.

(3) Monitoring requirements for disinfectant residuals.

(a) Chlorine and chloramines.

1. Routine monitoring. A community and nontransient noncommunity water system that uses chlorine or chloramines shall measure the residual disinfectant level in the distribution system at the same time as total coliforms are sampled, as specified in 401 KAR 8:200.

2. Reduced monitoring. Monitoring shall not be reduced.

(b) Chlorine dioxide.

1. Routine monitoring. A community, nontransient noncommunity, and transient noncommunity water system that uses chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the MRDL, the system shall take samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

2. Additional monitoring. Each day following a routine sample monitoring result that exceeds the MRDL, the system shall take three (3) chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, i.e., there is no booster chlorination, the system shall take three (3) samples as close to the first customer as possible, at an interval of at least six (6) hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one (1) or more disinfection addition points after the entrance to the distribution system, i.e., there is booster chlorination, the system shall take one (1) sample at each of the following locations:

a. As close to the first customer as possible;

b. In a location representative of average residence time; and

c. As close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system.

3. Reduced monitoring. Chlorine dioxide monitoring shall not be reduced.

(4) Monitoring requirements for disinfection byproduct precursors.

(a) Routine monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall monitor each treatment plant for total organic carbons, or TOC, no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. A system required to monitor under this paragraph shall also monitor for TOC in the source water before any treatment at the same time as monitoring for TOC in the treated water. These samples of the source water and treated water shall be considered paired samples. When the source water sample is taken, a system shall monitor for alkalinity in the source water before any treatment. A system shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(b) Reduced monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than two and zero-tenths (2.0) mg/L for two (2) consecutive years, or less than one and zero-tenths (1.0) mg/L for one (1) year, may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter if the annual average treated water TOC is greater than or equal to two and zero-tenths (2.0) mg/L.

(5) Bromide. A system required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based upon representative monthly measurements for one (1) year. The system shall continue bromide moni-

toring to remain on reduced bromate monitoring.

(6) Monitoring plan. A system required to monitor under this administrative regulation shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the cabinet and the general public no later than thirty (30) days following the applicable compliance dates in Section 2 of this administrative regulation. A system that uses as its source surface water or groundwater under the direct influence of surface water serving more than 3,300 people shall submit a copy of the monitoring plan to the cabinet no later than the date of the first report required by Section 8 of this administrative regulation. The cabinet may also require another system to submit the plan. After review, the cabinet may require changes in a plan element. The monitoring plan shall include at least the following elements:

(a) Specific location and schedule for collecting samples for a parameter included in this administrative regulation;

(b) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques;

(c) If providing water to a consecutive system, the sampling plan for TTHMs and HAA5s shall reflect the entire distribution system.

#### Section 7. Compliance Requirements. (1) General requirements.

(a)1. If compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

2. If compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

(b) A sample taken and analyzed under the provisions of this administrative regulation shall be included in determining compliance, even if the number of samples taken is greater than the minimum required.

(c) If during the first year of monitoring under Section 6 of this administrative regulation, an individual quarter's average causes or will cause the running annual average of that system to exceed the MCL, the system shall be out of compliance at the end of that quarter.

#### (2) Disinfection byproducts.

##### (a) TTHMs and HAA5.

1. For a system that monitors quarterly, compliance with MCLs in Section 3 of this administrative regulation shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of the samples collected by the system as prescribed by Section 6(2)(a) of this administrative regulation.

2. For a system monitoring less frequently than quarterly, a system shall demonstrate MCL compliance if the average of samples taken that year under the provisions of Section 6(2)(a) of this administrative regulation does not exceed the MCLs in Section 3 of this administrative regulation. If the average of the samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant, and the system is not in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. A system required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample that triggered the increased monitoring, plus the following three (3) quarters of monitoring.

3. If the running annual arithmetic average of quarterly averages covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

4. If a public water system fails to complete four (4) consecutive quarters of monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(b) Bromate. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples, or for months in which the system takes more than one (1) sample, the av-

erage of the samples taken during the month, collected by the system as prescribed by Section 6(2)(c) of this administrative regulation. If the average of samples covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. If a public water system fails to complete twelve (12) consecutive months' monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(c) Chlorite. Compliance shall be based on an arithmetic average of each three (3) sample set taken in the distribution system as prescribed by Section 6(2)(b)1b and 2 of this administrative regulation. If the arithmetic average of a three (3) sample set exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

#### (3) Disinfectant residuals.

##### (a) Chlorine and chloramines.

1. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under Section 6(3)(a) of this administrative regulation. If the average covering a consecutive four (4) quarter period exceeds the MRDL, the system shall be in violation of the MRDL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. If a system switched between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including all monitoring results of both chlorine and chloramines in calculating compliance. A report submitted pursuant to Section 8 of this administrative regulation shall clearly indicate which residual disinfectant was analyzed for each sample.

##### (b) Chlorine dioxide.

1. Acute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If a daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (1) or more of the three (3) samples taken in the distribution system exceeds the MRDL, the system shall be in violation of the MRDL. The system shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to the procedures for acute health risks in 401 KAR 8:070, Section 1(1)(c), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system shall also be considered an MRDL violation. The system shall notify the public of the violations in accordance with the provisions for acute violations under 401 KAR 8:070, Section 1(1)(c), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. Nonacute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system shall be in violation of the MRDL and the system shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for nonacute health risks in 401 KAR 8:070, Section 6, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system also shall be an MRDL violation, and the system shall notify the public of the violation in accordance with the provisions for nonacute violations in 401 KAR 8:070, Section 6, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(4) Disinfection byproduct precursors. Compliance shall be determined as specified by Section 9(3) of this administrative regulation. A system may begin monitoring to determine if Step 1 TOC removals will be able to be met twelve (12) months before the compliance date for the system. This monitoring is not required, and failure to monitor

during this period shall not be a violation. However, a system that does not monitor during this period and then determined in the first twelve (12) months that it is not able to meet the Step 1 requirements in Section 9(2)(b) of this administrative regulation and shall therefore apply for alternate minimum TOC removal or Step 2, requirements, shall not be eligible for retroactive approval of Step 2 requirements, as allowed pursuant to Section 9(2)(c) of this administrative regulation, and shall be in violation. A system may apply for Step 2 requirements after the compliance date. For a system required to meet Step 1 TOC removals, if the value calculated under Section 9(3)(a)4 of this administrative regulation is less than 1.00, the system shall be in violation of the treatment technique requirements and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

**Section 8. Reporting and Recordkeeping Requirements.** This section prescribes the reporting and record keeping requirements.

(1) A system required to sample quarterly or more frequently shall report to the cabinet within ten (10) days after the end of each quarter in which samples were collected, notwithstanding the provisions of 401 KAR 8:020. A system required to sample less frequently than quarterly shall report to the cabinet within ten (10) days after the end of each monitoring period in which samples were collected.

(2) Disinfection byproducts.

(a) A system monitoring for TTHM and HAA5 under the requirements of Section 6(2) of this administrative regulation on a quarterly or more frequent basis shall report:

1. The number of samples taken during the last quarter;
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of all samples taken in the last quarter;
4. The annual arithmetic average of the quarterly arithmetic average of this section for the last four (4) quarters; and
5. If the MCL was exceeded or not, based on Section 7(2)(a) of this administrative regulation.

(b) A system monitoring for TTHMs and HAA5 under the requirements of Section 6(2) of this administrative regulation less frequently than quarterly, but at least annually, shall report:

1. The number of samples taken during the last year;
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of all samples taken over the last year;
4. If the MCL was exceeded or not, based on Section 7(2)(a) of this administrative regulation.

(c) A system monitoring for TTHMs and HAA5 under the requirements of Section 6(2) of this administrative regulation less frequently than annually shall report:

1. The location, date, and result of the last sample taken; and
2. If the MCL was exceeded or not, based on Section 7(2)(a) of this administrative regulation.

(d) A system monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation shall report:

1. The number of samples taken each month for the last three (3) months;
2. The location, date, and result of each sample taken during the last quarter;
3. For each month in the reporting period, the arithmetic average of all samples taken in the month;
4. If the MCL was exceeded or not, based on Section 7(2)(c) of this administrative regulation, in which month it was exceeded, and how many times it was violated each month.

(e) A system monitoring for bromate under the requirements of Section 6(2) of this administrative regulation shall report:

1. The number of samples taken during the last quarter;
2. The location, date, and result of each sample taken during the last quarter;
3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year; and
4. If the MCL was exceeded or not, based on Section 7(2)(b) of this administrative regulation.

(3) Disinfectants.

(a) A system monitoring for chlorine or chloramines under the requirements of Section 6(2) of this administrative regulation shall report:

1. The number of samples taken during each month of the last quarter;
2. The monthly arithmetic average of all samples taken in each month for the last twelve (12) months;
3. The arithmetic average of all monthly averages for the last twelve (12) months; and
4. If the MRDL was exceeded or not, based on Section 7(3)(a) of this administrative regulation.

(b) A system monitoring for chlorine dioxide under the requirements of Section 6(3) of this administrative regulation shall report:

1. The dates, results, and locations of samples taken during the last quarter;
  2. If the MRDL was exceeded or not, based on Section 7(3)(b) of this administrative regulation; and
  3. If the MRDL was exceeded or not in any two (2) consecutive daily samples and if the resulting violation was acute or nonacute.
- (4) Disinfection byproduct precursors and enhanced coagulation or enhanced softening.

(a) A system monitoring monthly or quarterly for TOC under the requirements of Section 6(4) of this administrative regulation and that shall meet the enhanced coagulation or enhanced softening requirements in Section 9(2)(b) or (c) of this administrative regulation shall report:

1. The number of paired samples taken during the last quarter;
2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal;
4. Calculations for determining compliance with the TOC percent removal requirements, as provided in Section 9(3)(a) of this administrative regulation; and
5. If the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in Section 9(2) of this administrative regulation for the last four (4) quarters.

(b) A system monitoring monthly or quarterly for TOC under the requirements of Section 6(4) of this administrative regulation and meeting one (1) or more of the alternative compliance criteria in Section 9(1)(b) or (c) of this administrative regulation shall report:

1. The alternative compliance criterion that the system is using;
2. The number of paired samples taken during the last quarter;
3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
4. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water TOC for a system meeting a criterion in Section 9(1)(b)1 or 3 of this administrative regulation or of treated water TOC for a system meeting the criterion in Section 9(1)(b)2 of this administrative regulation;
5. The running annual arithmetic average based on monthly average, or quarterly samples, of source water specific ultraviolet absorbance, or SUVA, for a system meeting the criterion in Section 9(1)(b)5 of this administrative regulation or of treated water SUVA for a system meeting the criterion in Section 9(1)(b)6 of this administrative regulation;

6. The running annual average of source water alkalinity for a system meeting the criterion in Section 9(1)(b)3 of this administrative regulation and of treated water alkalinity for a system meeting the criterion in Section 9(1)(c)1 of this administrative regulation;

7. The running annual average for both TTHM and HAA5 for a system meeting the criterion in Section 9(1)(b)3 or 4 of this administrative regulation;

8. The running annual average of the amount of magnesium hardness removal, as  $\text{CaCO}_3$  in mg/L, for a system meeting the criterion in Section 9(1)(c)2 of this administrative regulation; and

9. If the system is in compliance or not with the particular alternative compliance criterion in Section 9(1)(b) or (c) of this administrative regulation.

**Section 9. Treatment Technique for Control of Disinfection Byproduct Precursors.** (1) Applicability.

(a) A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall operate with enhanced coagulation or en-

hanced softening to achieve the TOC percent removal level specified in subsection (2) of this section unless the system meets at least one (1) of the alternative compliance criteria listed in paragraph (b) or (c) of this subsection.

(b) Alternative compliance criteria for enhanced coagulation and enhanced softening system. A system that uses as its source surface water or groundwater under the direct influence of surface water using conventional filtration treatment may use the alternative compliance criteria in subparagraphs 1 to 6 of this paragraph to comply with this section, instead of complying with subsection (2) of this section. A system shall still comply with the monitoring requirements in Section 6(4) of this administrative regulation.

1. The system's source water TOC level, measured according to 40 CFR 141.131(d)(3) is less than two and zero-tenths (2.0) mg/L, calculated quarterly as a running annual average;

2. The system's treated water TOC level, measured according to 40 CFR 141.131(d)(3) is less than two and zero-tenths (2.0) mg/L, calculated quarterly as a running annual average;

3.a. The system's source water TOC level, measured according to 40 CFR 141.131(d)(3), is less than four and zero-tenths (4.0) mg/L, calculated quarterly as a running annual average;

b. The source water alkalinity, measured according to 40 CFR 141.131(d)(1), is greater than sixty (60) mg/L as  $\text{CaCO}_3$ , calculated quarterly as a running annual average; and either

c.(i) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or

(ii) Before the effective date for compliance in Section 2 of this administrative regulation, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in Section 2 of this administrative regulation to the use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. The system shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the cabinet for approval, not later than the effective date for compliance in Section 2 of this administrative regulation. These technologies shall be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule shall constitute a violation of this administrative regulation;

4. The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system;

5. The system's source water SUVA, before any treatment and measured monthly according to 40 CFR 141.131(d)(4) is less than or equal to two and zero-tenths (2.0) L/mg-m, calculated quarterly as a running annual average;

6. The system's finished water SUVA, measured monthly according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, calculated quarterly as a running annual average.

(c) Additional alternative compliance criteria for a softening system. A system practicing enhanced softening that is not able to achieve the TOC removals required by subsection (2)(b) of this section may use the alternative compliance criteria in subparagraphs 1 and 2 of this paragraph instead of complying with subsection (2) of this section. The system shall still comply with monitoring requirements in Section 6(4) of this administrative regulation.

1. Softening that results in lowering the treated water alkalinity to less than sixty (60) mg/L as  $\text{CaCO}_3$ , measured monthly according to 40 CFR 141.131(d)(1) and calculated quarterly as a running annual average; and

2. Softening that results in removing at least ten (10) mg/L of magnesium hardness as  $\text{CaCO}_3$ , measured monthly and calculated quarterly as an annual running average.

(2) Enhanced coagulation and enhanced softening performance requirements.

(a) A system shall achieve the percent reduction of TOC specified in paragraph (b) of this subsection between the source water and the combined filter effluent, unless the cabinet approves a system's request for Step 2 requirements under paragraph (c) of this subsection.

(b) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in

accordance with 40 CFR 141.131(d). A system practicing softening shall meet the Step 1 TOC reductions in the column of the table for source water alkalinity greater than 120 mg/L, for the specified source water TOC:

Step 1 Required Removal Percent of TOC by Enhanced Coagulation and Enhanced Softening for a System that Uses as its Source Surface Water or Groundwater Under the Direct Influence of Surface Water Using Conventional Treatment <sup>1,2</sup>			
Source water TOC, mg/L	Source water alkalinity, mg/L as $\text{CaCO}_3$		
	0 - 60	61 - 120	> 120 <sup>3</sup>
$2.0 \leq \text{TOC} \leq 4.0$	35.0 %	25.0 %	15.0 %
$4.0 < \text{TOC} \leq 8.0$	45.0 %	35.0 %	25.0 %
$\text{TOC} > 8.0$	50.0 %	40.0 %	30.0 %

<sup>1</sup>A system meeting a condition in subsection (1)(b) of this section need not operate with enhanced coagulation.

<sup>2</sup>A softening system meeting an alternative compliance criterion in subsection (3) of this section need not operate with enhanced softening.

<sup>3</sup>A system practicing softening shall meet the TOC removal requirements in this column.

(c) A system that uses as its source surface water or groundwater under the direct influence of surface water and that uses conventional treatment that is not able to achieve the Step 1 TOC removals required by paragraph (b) of this subsection due to water quality parameters or operational constraints shall apply to the cabinet, within three (3) months of failure to achieve the TOC removals required by paragraph (b) of this subsection, for approval of Step 2 removal requirements submitted by the system. If the cabinet approves the Step 2 requirements the cabinet may make those requirements retroactive for the purposes of determining compliance. Until the cabinet approves the Step 2 requirements, the system shall meet the Step 1 TOC removals contained in paragraph (b) of this subsection.

(d) Step 2 requirements. An application to the cabinet by an enhanced coagulation system for approval of Step 2 requirements under paragraph (c) of this subsection shall include, as a minimum, the results of bench- or pilot-scale testing conducted under subparagraph 1 of this paragraph. The submitted bench- or pilot-scale testing shall be used to determine the alternate enhanced coagulation level.

1. Alternate enhanced coagulation level shall be the coagulation at a coagulant dose and pH as determined by the method described in this subparagraph and subparagraphs 2 through 5 of this paragraph such that an incremental addition of ten (10) mg/L of alum, or equivalent amount of ferric salt, results in a TOC removal of less than or equal to three-tenths (0.3) mg/L. The percent removal of TOC at this point of the "TOC removal versus coagulant dose" curve then shall be the minimum TOC removal required for the system. Upon approval by the cabinet, this minimum requirement shall supersede the minimum TOC removal required by the table in paragraph (b) of this subsection. This requirement shall be effective until the cabinet approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve the alternative minimum TOC removal levels set by the cabinet shall be a violation of this administrative regulation.

2. Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding ten (10) mg/L increments of alum, or equivalent amounts of ferric salt, until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Enhanced Coagulation Step 2 Target pH	
Alkalinity, mg/L measured as $\text{CaCO}_3$	Target pH
0 - 60	5.5
61 - 120	6.3
121 - 240	7.0
> 240	7.5

3. For waters with alkalinities of less than sixty (60) mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below five and five-tenths (5.5) before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between five and three-tenths (5.3) and five and seven-tenths (5.7) in samples until the TOC removal of three-tenths (0.3) mg/L per ten (10) mg/L alum added, or equivalent addition of iron

coagulant, is reached.

4. The system may operate at a coagulant dose or pH necessary, consistent with other administrative regulations in 401 KAR 8:010 to 401 KAR 8:700, to achieve the minimum TOC percent removal approved under paragraph (c) of this subsection.

5. If the TOC removal is consistently less than three-tenths (0.3) mg/L of TOC per ten (10) mg/L of incremental alum dose, at all doses of alum, or equivalent addition of iron coagulant, the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the cabinet for a waiver of enhanced coagulation requirements.

(3) Compliance calculations.

(a) A system that uses as its source surface water or groundwater under the direct influence of surface water other than that identified in subsection (1)(b) or (c) of this section, shall comply with requirements in subsection (2)(b) or (c) of this section. A system shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

1. Determine actual monthly TOC percent removal, which shall be calculated as:

$$(1 - (\text{treated water TOC}/\text{source water TOC})) \times 100;$$

2. Determine the required monthly TOC percent removal from either the table in subsection (2)(b) of this section or from subsection (2)(c) of this section;

3. Divide the value in subparagraph 1 of this paragraph by the value in subparagraph 2 of this paragraph;

4. Add together the results of subparagraph 3 of this paragraph for the past twelve (12) months and divide by twelve (12); and

5. If the value calculated in subparagraph 4 of this paragraph is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) A system may use the provisions in subparagraph 1 to 5 of this paragraph instead of the calculations in paragraph (a) 1 through 5 of this subsection to determine compliance with TOC percent removal requirements:

1. In a month that the system's treated or source water TOC levels, measured according to 40 CFR 141.131(d)(3), is less than two and zero-tenths (2.0) mg/L, the system may assign a monthly value of one and zero-tenths (1.0), instead of the value calculated in paragraph (a)3 of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection;

2. In a month that a system practicing softening removes at least ten (10) mg/L of magnesium hardness, as  $\text{CaCO}_3$ , the system may assign a monthly value of one and zero-tenths (1.0), instead of the value calculated in paragraph (a)3 of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection;

3. In a month that the system's source water SUVA, before treatment and measured according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) instead of the value calculated in paragraph (a)3 of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection;

4. In a month that the system's finished water SUVA, measured according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) instead of the value calculated in paragraph (a)3 of this subsection when calculating compliance under the provisions of paragraph (a) of this subsection; and

5. In a month that the system enhanced softening lowers alkalinity below sixty (60) mg/L as  $\text{CaCO}_3$ , the system may assign a monthly value of one and zero-tenths (1.0) instead of the value calculated in paragraph (a)3 of this subsection when calculating compliance under the provisions of paragraph (a) of this subsection.

(c) A system that uses as its source surface water or groundwater under the direct influence of surface water and that uses conventional treatment may also comply with the requirements of this section by meeting the criteria in subsection (1)(b) or (c) of this section.

(4) Treatment technique requirements for DBP precursors. For a system that uses surface water or groundwater as its source and that uses conventional treatment, enhanced coagulation or enhanced softening shall be a treatment technique to control the level of disinfection byproduct precursors in a drinking water treatment or drinking water

distribution system.

Section 10. Federal Regulation Adopted Without Change. (1) 40 CFR 141.131, July 2000.

(2) The subject matter of this administrative regulation relating to the analytical methods and other analytical requirements is governed by that federal regulation.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 1, 2001

FILED WITH LRC: February 1, 2001 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates into Kentucky's administrative regulations the new federal requirements in 40 CFR 141.130 - 141.135 for public water systems that provide drinking water and that treat their water with a chemical disinfectant for either primary or residual treatment. It establishes maximum residual disinfectant levels (MRDLs) and MRDL goals (MRDLGs), maximum contaminant levels (MCLs) and MCL goals (MCLGs), and treatment techniques for compounds of disinfectants, disinfection byproducts, and disinfection precursors. The compounds are disinfectants (chlorine, chloramines, and chlorine dioxide); organic disinfection byproducts (total trihalomethanes, or TTHMs: the sum of chloroform, bromodichloromethane, dibromochloromethane, and bromoform; and haloacetic acids, or HAA5s: the sum of dichloroacetic, trichloroacetic, monochloro-acetic, monobromoacetic, and dibromoacetic acids); and two inorganic disinfection by-products, chlorite and bromate. The federal regulation is also called the Stage 1 Disinfection Byproducts Rule (DBPR). The federal regulation includes monitoring, reporting, and public notification requirements for these compounds. Also, the federal regulation contains percent removal requirements for total organic carbon (TOC), which is a precursor to disinfection byproducts. Finally, certain requirements for chlorine dioxide apply to transient noncommunity water systems. 401 KAR 8:150 and 8:160 require public water systems to protect against microbial contamination with a disinfectant. While these disinfectants are effective in controlling many microorganisms, they react with natural organic and inorganic matter in the water to form disinfection byproducts (DBPs), some of which may pose health risks. This administrative regulation puts limits on the levels of disinfection byproducts that are formed and levels on the precursors of those disinfection byproducts, thus ensuring that Kentucky's drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. The U.S. Environmental Protection Agency (EPA) predicts that this rule will provide public health protection for public water systems that were not previously subject to regulations on disinfection byproducts (generally systems serving populations of less than 10,000). The rule will also, for the first time, provide public health protection from exposure to haloacetic acids, chlorite (a major chlorine dioxide byproduct), and bromate (a major ozone byproduct). This administrative regulation revises, updates, and supersedes 401 KAR 8:500 for total trihalomethanes. After January 1, 2004, that administrative regulation will not apply to any sources, and will be repealed. 401 KAR 8:500 on disinfection byproducts currently applies to community water systems that serve a population of 10,000 or more and that add a disinfectant to the water. It requires those systems to meet a total trihalomethane (TTHM) MCL of .100 mg/L. Since the federal regulation was promulgated in 1979, and Kentucky's administrative regulation after that, most larger community water systems that use surface water or ground water under the direct influence of surface water as their source have had been able to come into compliance with the .100 mg/L limit. The new federal regulation tightens (reduces) the TTHM MCL to .080 mg/L, adds new MCLs for five haloacetic acids (HAA5) and other disinfectants, and requires a percent removal of total organic carbon (TOC), which is a disinfection precursor. The federal regulation and this administrative regulation



also extend the applicability to all systems that disinfect, although it gives the smaller systems more time to come into compliance. It also requires transient noncommunity systems that use chlorine dioxide as a disinfectant or oxidant to meet new requirements for those compounds. The U.S. EPA has determined that the required techniques in the final regulation are feasible since there have been significant changes in technology and treatment techniques since the original TTHM regulation was promulgated in the 1979.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating the administrative regulations in this chapter. In December 1998, the national primary drinking water regulations were amended to add a new regulation, the Stage 1 Disinfection Byproducts Rule, also called the rule for Disinfectants, Disinfection Byproducts, and Disinfection Precursors. To maintain Kentucky's "primacy" the Cabinet is required to promulgate this administrative regulation that contains the requirements of the new federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky's administrative regulations the provisions of the federal regulation, thus maintaining Kentucky's program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides additional disinfection requirements for public water systems, thus maintaining its program for the purification of water for public use.

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

(a) How the amendment will change this administrative regulation: Not applicable since this is a new administrative regulation. This administrative regulation is being amended after the public hearing to address commentors' concerns. The first changes relate to clarifying the Cabinet's intent regarding consecutive systems and how the term "distribution system" is used. The new language in Section 2(4)(b)1 now specifies that a producing system that produces water and provides water to another system shall be responsible for monitoring throughout the joint distribution system, which shall consist of the distribution systems of both the producing system and all purchasing systems. The next sentence is amended slightly to state that monitoring shall be performed at a point in the joint distribution system that reflects the longest period of retention. The amendments in Section 2(4)(c) address two separate concerns: First, in a newly created Section 2(4)(c)1, the language is strengthened to allow the Cabinet to require that a purchasing system alter its operation and maintenance practices to alleviate potential exceedances of the MCL for TTHM and HAA5 in its distribution system. The second amendments to Section 2(4)(c) created a new subparagraph 2 and clarify the Cabinet's intentions regarding the purchasing system's responsibility to monitor for maximum residual disinfectant levels at the same points in the distribution system and at the same times as total coliforms are sampled as specified in 401 KAR 8:200. The last part of the sentence is being deleted.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new administrative regulation. These amendments after the public hearing are necessary to clarify the Cabinet's intent regarding monitoring for consecutive systems and maximum residual disinfectant levels and to strengthen the Cabinet's ability to require changes if the MCL for TTHM or HAA5 is going to be exceeded.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will eventually affect all public water systems in Kentucky, of which there are approximately 650. The applicability is "phased in" to apply first to community water systems that serve a population of 10,000 or more and use as their source surface water or ground water under the direct influence of surface water. Those systems shall be in compliance by January 1, 2002. There are about 100 of those systems in Kentucky, most of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth. The remaining systems shall comply with this administrative regulation by January 1, 2004. There are about 550 of those remaining systems, some of which are controlled or owned by local governments. Those smaller systems also provide drinking water to citizens of the Commonwealth. The changes to this administrative regulation after the public hearing will affect producers that sell water to another system, and purchasers that buy their water to subsequently sell to their customers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Due to the new MCL for TTHMs, which is 20% lower than the current MCL, the addition of MCLs for other disinfectants and disinfection byproducts, percent removal requirements for disinfection precursors, and the addition of new treatment technologies, water treatment plants will be required to monitor for additional parameters, optimize existing treatment, and/or change treatment practices. These will result in greater expenses (testing, chemicals, residuals production, new technology), and more stringent operation and maintenance. Public water systems are required to meet the new MCLs and MRDLs for the various compounds. They are also required to remove specified percentages of organic materials, measured as total organic carbon (TOC), that may react with disinfectants to form disinfection byproducts (DBPs). There are additional monitoring and sampling requirements to determine compliance. TOC removal will be achieved through a treatment technique (enhanced coagulation or enhanced softening), unless a system meets alternative criteria. These are requirements that are imposed by the promulgation of the federal regulation and apply to all affected systems, regardless of Kentucky's action of promulgating this administrative regulation. The larger systems (population served of 10,000 or more) that have been subject to the previous administrative regulation for disinfection byproducts, 401 KAR 8:500, will generally be able to meet the new standards. They have been measuring for TTHMs, and have been meeting the previous standard. They have also been making changes in their processes in anticipation of the final rule since the federal regulation was proposed in 1994. The larger impact will be on those systems that serve a population of less than 10,000. They have not been subject to the current TTHM standard, and thus have not been measuring for TTHMs, disinfection precursors, or other disinfection byproducts. The federal regulation and this administrative regulation will impact those systems the most. Nationally, EPA predicts that a higher percentage of small systems (70%) will be affected than will large systems (61%) because smaller systems previously did not have to comply with a TTHM standard. In Kentucky, about 550 systems have a population served of less than 10,000, although some of those systems do have TTHM data because they purchase water from another system, and together they serve more than 10,000 persons. These 550 systems will be impacted the most by this administrative regulation, although they have until 2004 to come into compliance. On a national basis, EPA predicted that 39% of the systems would need no further treatment to meet the new standards; 16.6% would use chlorine or chloramines to comply; 38% would use enhanced coagulation and either chloramines or chlorine; and 6.5% would use ozone, chlorine dioxide, granular activated carbon, or membrane filtration. The estimate that 39% of the systems would not need any additional controls is attributed to the less stringent disinfection requirements under the Interim Enhanced Surface Water Treatment Rule, in 40 CFR 141.170 to 141.175 and the proposed 401 KAR 8:160, included in this package of proposed administrative regulations. That rule reduces the formation of DBPs and reduces the number of systems needing treatment to meet the Stage 1 DBPR. Also, a substantial number of large and small systems may have already made

treatment changes to comply with the proposed rule for the federal regulation, when it was released in 1994. Members of the Cabinet's drinking water technical assistance program have been working with affected public water systems since the federal regulation was promulgated. As a result, most of the larger affected systems are already meeting the new requirements. The team is currently working with the mid-sized systems (populations of 10,000 - 3,300), and is expected to work with the remaining systems well before the effective date for the smaller systems, January 2004. TOC removal is generally accomplished by the Step 1 TOC removal process. Again, most larger systems are able to meet their required removal percentage, although it does require additional testing, supplies, and staff that are adequately trained and experienced. If a system is not able to meet the required Step 1 removal percentage, it can use the Step 2 alternative procedure. To date, the Cabinet has found that most systems that could not meet the Step 1 removal percentage should be able to meet the alternative Step 2 performance criteria. The alternative Step 2 requirements require adequately trained staff, additional testing, and additional supplies beyond the Step 1 removal requirements. Most of the changes after the public hearing represent clarifications of the Cabinet's intent regarding producing and purchasing systems, therefore there is no significant impact. The changes that strengthen the Cabinet's ability to require changes in the purchaser's distribution system, which also represents a clarification of the Cabinet's intent, could result in the purchasing system flushing its lines more frequently, replacing worn out or contaminated lines, etc. All of these could potentially cost money for the system, but are also good operation and maintenance practices and would prevent the MCL violation for TTHM or HAA5 from occurring.

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

Surface Water System Costs for DBP Control Technologies  
at 7% Cost of Capital (\$/1000 Gallons Treated)

Treatment Technique	System Size (Population Served)						
	<100	100-500	500-1K	3.3K-10K	10-25K	25-50K	100-500K
Chlorine/Chloramine	0.71	.19	0.06	0.03	0.01	0.01	0.01
Enhanced Coagulation (EC)	0.15	.13	0.12	0.09	0.08	0.07	0.07
EC + Chloramines	0.87	.32	0.18	0.12	0.09	0.08	0.07
Ozone + Chloramines	12.67	3.21	1.05	0.38	0.23	0.13	0.06
Chlorine dioxide	24.33	5.73	1.65	0.24	0.11	0.07	0.05
Membranes	3.40	3.47	3.39	1.72	0.96	0.96	0.87
# Ky. Systems in Category	103	124	44	139	75	19	2

This table shows approximate costs for 506 of Kentucky's public water systems, out of the 651 systems in Kentucky. Systems whose sizes are not listed in the table have costs between those listed for the specific treatment technique (see also the complete table in the December 16, 1998 Federal Register). Smaller systems that must be in compliance by 2004 probably will have to modify their treatment process and undertake DBP monitoring and reporting. Systems needing to modify treatment may switch to other disinfectants for residual disinfection, move the point of disinfectant application, and improve precursor removal. These are relatively low-cost alternatives. Higher cost alternatives, such as using ozone for primary disinfection or using GAC or membranes for precursor removal may also provide other treatment benefits, especially in light of future regulations. Some of these systems may choose nontreatment alternatives, such as consolidation with another system or changing to a higher quality water source, if available. Smaller systems are also more likely to need to increase plant staffing and training to understand process control strategy. Small systems will be required to do this since larger systems have already taken these steps to meet the current TTHM regulation, 401 KAR 8:500. Finally, meeting the requirements of the Stage I DBPR will require operating at a higher level of sophistication and in a better state of repair than some plants serving less than 10,000 people have considered acceptable or necessary in the past. Therefore, those systems will more likely have to make structural improvements and enhance laboratory and staff capacity. Those systems will also more likely need to enhance their technical, financial, and managerial capacity. If so, those systems will possibly be eligible for funding from the state drinking water revolving fund to help them achieve compliance. If a system is not eligible for those or other funds, then the system may

(a) Initially: There are no cost estimates specific to Kentucky's public water systems. Nationally, EPA estimates capital costs of \$4.97 billion (in 1998 dollars) and total annual cost of \$1.3 billion. These costs are imposed whether or not Kentucky promulgates this administrative regulation. As stated above, most larger systems have been able to come into compliance by optimizing their performance. Additional costs come in the form of increased monitoring and testing, technology changes if necessary, and more trained and experienced operators. Phase I of the regulation requires generally that systems that serve a population of 10,000 or more be in compliance by January 1, 2002. Phase II generally applies to systems that serve a population of less than 10,000; those systems shall be in compliance by January 1, 2004. For the "Phase I" systems, treatment practices would be optimized for disinfection byproduct precursor removal and disinfection application. Additional monitoring must also be conducted at an approximate cost of \$5,000 to \$9,000 annually, depending upon the disinfectants used. Treatment optimization for precursor removal can double a coagulant budget and significantly affect filter washwater usage, residuals production, operation and maintenance procedures, and turbidity (pathogen) removal. For the "Phase II" systems, monitoring costs will range from \$5,500 to \$10,000 annually. The increased costs include TTHM monitoring that the large systems are currently required to perform. The following table, which contains parts of the table from the final rule on the federal regulation, 40 CFR 141.130 to 141.135 (December 16, 1998 *Federal Register*, 63 FR 69437), gives a general idea of the costs imposed by this federal regulation, which will also be incurred by Kentucky's public water systems. The table includes operation and maintenance costs and amortized capital costs, using 7% discount rate and a 20-year amortization period.

need to merge with other systems or use a variance or exemption, if available.

(b) On a continuing basis: The initial costs will stay consistent. Public water systems could see a reduction in monitoring costs due to lower analytical costs in the future, or a reduction in monitoring frequency, if the system records below specified levels. Smaller systems (those serving a population of less than 10,000) will be impacted the most due to the lack of historical monitoring data for TTHMs on which to base treatment optimization decisions and a small revenue base over which to spread the additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the Cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the Cabinet's program is no less stringent than the federal program, and the Cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the Cabinet has received an increase in funding from the U.S. EPA to implement other new provisions of the Safe Drinking Water Act.

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



regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. While this administrative regulation will eventually apply to most public water systems, the applicability is "phased in" for smaller systems or systems not previously subject to the previous administrative regulation on TTHMs. A community water system or nontransient noncommunity water system that uses as its source surface water or ground water under the direct influence of surface water and that serves a population of 10,000 or more persons shall comply beginning January 1, 2002. A transient noncommunity system that uses as its source surface water or ground water under the direct influence of surface water and that serves a population of 10,000 or more persons that uses chlorine dioxide as a disinfectant or oxidant shall also comply beginning January 1, 2002. If a community water system or a nontransient noncommunity water system serves fewer than 10,000 persons or if the system uses only ground water not under the direct influence of surface water (a "true" ground water system), then the system shall comply beginning January 1, 2004. If a transient noncommunity water system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, or if the system uses only ground water not under the direct influence of surface water and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply beginning January 1, 2004. In addition, a system that is installing granular activated charcoal (GAC) or membrane technology to comply with the maximum contaminant levels for disinfection byproducts may apply to the cabinet for an extension of up to 24 months past the required dates, under specified conditions. Finally, EPA provided additional tiering: the federal regulation and this administrative regulation require less routine monitoring for smaller systems and systems that are measuring specified levels. Systems must return to full monitoring if they record above the specified levels. Smaller systems may also reduce their economic burden by consolidation with larger systems, using money from the drinking water state revolving fund loans, and using variances and exemptions when needed and applicable.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.64, 141.65, 141.130 to 141.135.
2. State compliance standards. 401 KAR 8:510.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation contains new requirements for disinfectants, disinfection byproducts, and disinfection precursors.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? One provision in Section 2 of the administrative regulation that deals with consecutive systems is in addition to the federal requirements. This administrative regulation makes the producing system responsible for monitoring for total trihalomethanes and HAA5s and for making corrections to reduce exceedances of the MCL. However, if the producing system is not able to eliminate all exceedances, then the administrative regulation allows the Cabinet to require the purchasing system to make corrections deemed necessary to eliminate the exceedances.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal regulation does not directly address consecutive systems, but they occur frequently in Kentucky. The requirements in this administrative regulation provide a mechanism by which the party responsible for exceedances of TTHM or HAA5s MCLs will be responsible for correcting the problem.

#### 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. This administrative regulation will affect some public water systems, many of which are owned or controlled by local governments.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates

to those affected public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There are no cost estimates specific to Kentucky. Larger systems generally are able to comply with all the requirements by optimizing their performance. There are increased monitoring and testing requirements, necessitating more skilled and trained operators. Smaller systems will be required to test for TTHMs and the HAA5 compounds, for the first time. Such tests cost about \$1,500 quarterly. Proportionally, there will be more increased monitoring and testing requirements, and an even greater need for skilled operators, which cost more to train and retain. In addition to the new testing requirements, systems may have to use new technologies to meet the requirements of this administrative regulation. See also the discussion on costs in (5) in the Regulatory Impact Analysis.

Other Explanation: A public water system may elect to pass on some of the costs to its customers. If it does, the U.S. EPA estimates that nationwide for all systems, about 95% of the customers may see an increase of less than \$1 per month in their water bills, about 4% may see an increase of between \$1 - \$10, and 1% may see an increase of more than \$10 per month. Alternatively, a system greatly affected by this administrative regulation may decide to merge with another system; use funds from the state revolving funds, if available; or apply for any available variances or exemptions.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance Division of Health Insurance Policy and Managed Care (Amended After Hearing)

#### 806 KAR 17:250. Notification requirements for drug benefits.

RELATES TO: KRS 304.17A-535

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes notification requirements of a managed care plan when removing a prescription medication from its drug formulary; when changing the supply amount in a prescription; and when prior authorization is required for a prescription medication.

Section 1. Definitions. (1) "Drug formulary" means a list of prescription medications preferred for use by a managed care plan and dispensed through a participating pharmacy to an enrollee.

(2) "Enrollee" is defined in KRS 304.17A-500(4).

(3) "Maintenance prescription medication" means a prescription drug with at least three (3) claims for a thirty (30) day supply within the last four (4) [taken for at least three (3) consecutive] months, or at least one (1) claim for a ninety (90) day supply in the last six (6) months, including a mail order prescription, and the drug is required for maintenance therapy as determined by the prescribing provider.

(4) "Managed care plan" is defined in KRS 304.17A-500(8).

Section 2. Notification Requirements. (1) A managed care plan shall provide advance written notice to an enrollee of the following changes [identified as having filled a prescription within the immediately preceding six (6) months period at least sixty (60) days prior to]:

(a) The removal of a maintenance prescription medication from its drug formulary;

(b) A change that restricts or reduces the quantity or dosage of a prescription medication supplied when a prescription is filled; or

(c) A requirement for prior authorization of a prescription medication is added.

(2) A written notification pursuant to subsection (1) of this section shall be mailed to an enrollee:

(a) At least thirty (30) but no less than sixty (60) days prior to the effective date of a change as listed in subsection (1)(a), (b), or (c) of this section for an enrollee who is dispensed a prescription for the drug within six (6) months prior to the notification date; and

(b) Within thirty (30) days following the effective date of a change as listed in subsection (1)(a), (b), and (c) of this section for an enrollee who is dispensed a prescription for the drug after the notification date required by subsection (2)(a) of this section.

(3) A written notification pursuant to subsection (1) of this section shall include:

(a) A clear explanation of the action being taken by the managed care plan;

(b) The name and phone number of a contact person to answer questions; and

(c) A description of the exceptions policy to the drug formulary developed in compliance with KRS 304.17A-535(4).

JANIE A. MILLER, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: February 2, 2001

FILED WITH LRC: February 2, 2001 at 3 p.m.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette Kay Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification requirements of a managed care plan when removing a prescription medication from its drug formulary, when changing the supply amount in a prescription, and when prior authorization is required for a prescription medication.

(b) The necessity of this administrative regulation: This administrative regulation establishes uniform notification requirements for managed care plans when changing their formularies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), in that this regulation establishes uniform notification requirements for managed care plans when changing their formularies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform notification requirements for managed care plans when changing their formularies.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all 20 managed care plans issuing benefit plans in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Managed care plans will be required to provide written notice to enrollees when a drug is removed from the drug formulary. Written notice will also be required when a quantity of a drug is restricted or when a drug not subject to preauthorization requirements becomes subject to preauthorization requirements.

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

administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's existing budget will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not used because this administrative regulation applies to all managed care plans issuing benefit plans within the Commonwealth of Kentucky.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance Division of Health Insurance Policy and Managed Care (Amended After Hearing)

#### 806 KAR 17:270. Telehealth claim forms and records.

RELATES TO: KRS 304.17A-138

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-138(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-138(4) requires that the department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

Section 1. Definitions. (1) "ADA" means American Dental Association.

(2) "Electronic" or "electronically" is defined by KRS 304.17A-700(7).

(3) "HCFA" means Health Care Financing Administration.

(4) "Health benefit plan" is defined by KRS 304.17A-005(17).

(5) "Health care provider" or "provider" is defined by KRS 304.17A-005(18)(6).

(6) "Health insurer" or "insurer" is defined by KRS 304.17A-005(12).

(7) "Kentucky Uniform Billing Committee (KUBC)" is defined by KRS 304.17A-700(13).

(8) "National Uniform Billing Committee (NUBC)" is defined KRS 304.17A-700(14).

(9) "Telehealth" is defined by KRS 311.550(20).

(10) "UB" means uniform billing.

Section 2. Application. This administrative regulation shall apply to [all-insurers-issuing] health benefit plans delivered, issued, or reviewed on or after July 15, 2001 [in-the-state-of-Kentucky].

Section 3. Claim Forms. The following claim forms shall be used for reimbursement of telehealth consultations:

(1) A claim form for dentists shall consist of the ADA Form - J588 approved by the American Dental Association effective at the time the service was billed; and

(2) A claim form for all other health care providers shall consist of the HCFA - 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee effective at the time the service was billed.

Section 4. Retention of Records. A provider shall, upon request, provide a copy of the following to an insurer as support for a claim for reimbursement of a telehealth consultation:

(1) Written record which substantiates the request by the referring provider for the telehealth consultation by the primary care provider; and

(2) Written record of the telehealth consultation.

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Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ADA Form - J588, "Dental Claim Form" (1999 version 2000); and

(b) Form HCFA - 1500, "Health Insurance Claim Form" (12-90 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANIE A. MILLER, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: February 2, 2001

FILED WITH LRC: February 2, 2001 at 3 p.m.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette K. Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims.

(b) The necessity of this administrative regulation: KRS 304.17A-138(4) requires that the department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers issuing health benefit plans in the state of Kentucky, all health care providers and dentists submitting telehealth claims to insurers issuing health benefit plans.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The department believes that the claim forms and records required to be maintained for telehealth claims are for the most part, already being used. However, the regulation will provide for uniformity in the forms that are used by providers when making telehealth claims.

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

(a) Initially: The department anticipates minimal cost to implement this administrative regulation.

(b) On a continuing basis: The department anticipates minimal cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment: The department does not anticipate that an increase in fees will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers licensed to engage in the health insurance activities in the state of Kentucky that provide health insurance coverage in the individual and small group markets after June 30, 1998. Neither is tiering applied with respect to persons in soliciting health insurance coverage since this administrative regulation applies to all persons soliciting health insurance coverage to individuals or nonemployer small groups in Kentucky.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Behavioral Health Programs (Amended After Hearing)

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

RELATES TO: KRS 205.520, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, d, 1396s

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 205.560 [1998 Ky. Acts ch. 426, sec. 4(3)]

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 provides for coverage and payments for Impact Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Behavioral health professional" means a:

(a) Psychiatrist;

(b) Physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) Psychologist licensed and functioning in accordance with KRS 319.050;

(d) Psychologist with autonomous functioning, certified and functioning in accordance with KRS 319.056;

(e) Clinical social worker licensed and functioning in accordance with KRS 335.100;

(f) Advanced registered nurse practitioner licensed and functioning in accordance with KRS 314.042;

(g) Marriage and family therapist licensed and functioning in accordance with KRS 335.300;

(h) Professional counselor certified and functioning in accordance with KRS 335.500;

(i) Professional art therapist certified and functioning in accordance with KRS 309.130; or

(j) Alcohol and drug counselor certified and functioning in accordance with KRS 309.080.

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and functioning in accordance with KRS 319.056;

(b) Psychological associate certified and functioning in accordance with KRS 319.064;

(c) Marriage and family therapist associate permitted and functioning in accordance with KRS 335.332;

(d) Social worker certified and functioning in accordance with KRS 335.080; or

(e) Professional counselor associate certified and functioning in accordance with KRS 335.505.

(3) "Behavioral health organization" means a:

(a) Hospital licensed and functioning in accordance with 902 KAR

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20:009, 902 KAR 20:012 and 902 KAR 20:016 or 902 KAR 20:170 and 902 KAR 20:180;

(b) Community mental health center licensed and functioning in accordance with 902 KAR 20:091;

(c) Child-caring facility licensed and functioning in accordance with 922 KAR 1:300;

(d) Child-placing facility licensed and functioning in accordance with 922 KAR 1:310;

(e) Organization accredited by the Joint Commission for the Accreditation of Healthcare Organizations or the Council on Accreditation of Services for Families and Children; or

(f) Facility, agency, institution, organization, or business that is approved by the Departments for Community Based Services and Mental Health and Mental Retardation Services to provide a service covered by this administrative regulation using standards of participation approved by the department.

(4) "Collaborative service plan" means an individualized written plan that specifies a therapeutic intervention and other services that are required by a recipient and that meets the requirements of Section 5 of this administrative regulation.

(5) "Community mental health center" means an organization licensed and functioning in accordance with 902 KAR 20:091.

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "IMPACT Plus" means a program of community based behavioral health services provided through an agreement between the department and the Department for Public Health.

(8) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;

(d) Provided for a medical reason rather than primarily for the convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r), and 42 CFR 441 Subpart B, for recipients under twenty-one (21) years of age.

(9) "Professional equivalent" means a person employed by a community mental health center who:

(a) Has received a degree with a major in counseling other than educational guidance counseling, expressive therapy, human services, marriage and family studies, psychology, or social work [in an identical field of psychology, sociology, social work or human services as determined by the department] with the following combination of education and experience;

1. Bachelor's degree and three (3) years full-time supervised experience;

2. Masters degree and six (6) months full-time supervised experience; or

3. Doctorate degree and no experience;

(b) Has supervised experience in the delivery of therapeutic rehabilitation; individual, group, family and collateral outpatient therapies; or intensive in-home services; and

(c) Has been determined by the department through the Professional Equivalency Review Committee to meet the minimum qualifications to be deemed a professional equivalent [Has been approved as meeting requirements for reimbursement by the department prior to July 1, 2000].

(10) "Recipient" means a person who has applied for medical assistance and has been determined to meet applicable conditions for eligibility pertaining to Kentucky's Medicaid Program.

(11) "Subcontractor" means a person, a facility, agency, institution, organization, or business that is subcontracted by the Depart-

ment for Community Based Services or the Department for Mental Health and Mental Retardation Services to provide a service in accordance with this administrative regulation.

(12) "Targeted case management service" means a service provided pursuant to 42 USC 1396n.

(13) "Title V agency" means the Department for Public Health.

Section 2. Title V Interagency Agreement. Services provided pursuant to Section 6 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Eligibility. A recipient under twenty-one (21) years of age shall be eligible to receive a medically-necessary service covered in Section 6 of this administrative regulation if the recipient:

(1) Is in the custody or under the supervision of the state or at risk of being in the custody of the state; and

(2) Meets one (1) of the following:

(a) Is in a hospital or psychiatric residential treatment facility and would meet the criteria of Section 4 of this administrative regulation if discharged; or

(b) Is at risk of institutionalization as specified in Section 4 of this administrative regulation.

Section 4. Criteria for At Risk of Institutionalization. (1) A recipient shall be at risk of institutionalization if the recipient:

(a) Has been individually assessed face-to-face by a behavioral health professional or a behavioral health professional under clinical supervision and determined to require immediate short-term residential crisis stabilization as the sole service in accordance with Section 6(14) of this administrative regulation; or

(b)1. Has a severe, persistent, Axis I diagnosis other than dementia or substance abuse, established in the "The Diagnostic and Statistical Manual of Mental Disorders, fourth edition", DSM IV™, Copyright© 1994, American Psychiatric Association published by the American Psychiatric Association;

2. Has documentation of a severe behavioral health problem that has persisted in the home, school, or community setting during the past six (6) months; and

3. Requires a coordinated plan of medically necessary community based behavioral health services to prevent worsening of a behavioral health condition that may result in institutionalization for behavioral health services.

(2) A recipient shall be considered no longer at risk of institutionalization and not eligible for IMPACT Plus services if:

(a) A determination has been made by a behavioral health professional or a behavioral health professional under clinical supervision, that the only service necessary was immediate short-term residential crisis stabilization, a period of residential crisis stabilization was provided, and the recipient no longer needs such service, or ten (10) days of residential crisis stabilization has been provided, whichever occurs first; or

(b) The recipient no longer meets the criteria specified in subsection (1)(b) of this section.

Section 5. Standards for a Covered Service. (1) The department shall prior authorize one (1) unit of a targeted case management service upon determination by the department that a recipient meets the eligibility requirements of Section 3 of this administrative regulation.

(2) A service covered in accordance with Section 6 of this administrative regulation shall be prior authorized by the department based on documentation of medical necessity.

(3) A covered service shall be provided in the least restrictive setting appropriate for the recommended treatment or care.

(4) A covered service shall be provided by a [qualified] behavioral health professional, a behavioral health professional under clinical supervision, or a behavioral health organization.

(5) A therapeutic group residential service shall not be reimbursed outside the geographical boundaries of Kentucky unless requirements listed in 907 KAR 3:035 have been met.

(6) Except for immediate residential crisis stabilization and a single unit of targeted case management approved upon eligibility deter-

mination, a covered service shall be provided in accordance with a collaborative service plan that:

- (a) Supports the level and type of care to be provided;
- (b) Is recommended by a team in a meeting that shall include:
  1. The parent, guardian, or caregiver of the recipient if the recipient is under eighteen (18) years of age;
  2. A clinical professional that shall be one of the following:
    - a. A behavioral health professional;
    - b. A behavioral health professional under clinical supervision; or
    - c. A community mental health center professional equivalent who is currently providing therapy services for the individual recipient;
  3. A provider of targeted case management services as specified in Section 6(1) of this administrative regulation; and
  4. [One (1) of the following:
    - a. A representative of the local education authority;
    - b. A representative of the Department for Community Based Services;
    - c. A representative of the Department for Juvenile Justice; or
    - d. Another individual or] A representative of a child serving organization or another individual that has been involved with the individual recipient and who does not employ a person identified in this subsection;
- (c) Describes a coordinated plan of medically necessary community based behavioral health services, that specifies a modality, frequency, intensity and duration of services, sufficient to maintain the recipient in the community; and
- (d) Identifies the following:
  1. A program of therapies, activities, interventions or experiences designed to accomplish the plan;
  2. The behavioral health professional, behavioral health professional under clinical supervision or the professional equivalent who shall manage the continuity of care;
  3. Interventions by caregivers in the home, school, and community setting that support a recipient's ability to be maintained in the community;
  4. Identified behavioral, social and physical problems with interventions and objective, measurable goals;
  5. Discharge criteria for each of the requested services that specify the client behavioral indicators for discharge from the service;
  6. A crisis action plan that progresses through a continuum of care that begins with the use of natural supports and progresses through low intensity services to high intensity services or inpatient services; and
  7. A plan for transition to a lower intensity of services and for discharge from IMPACT Plus services.

**Section 6. Covered Services. (1) Targeted case management.**

- (a) A targeted case management service shall be an activity that assists a recipient in accessing needed medical, social, educational, and other support services that shall include the following:
  1. A case management assessment that shall include:
    - a. Documentation of a multiaxial assessment that includes descriptions of the behaviors or symptoms upon which the diagnoses are based;
    - b. Documentation of the date of a recipient's initial diagnosis including the professional and agency providing diagnosis;
    - c. Description of the impact of the diagnosis over time; and
    - d. Description of all systems for which [that] the recipient needs coordination of services;
  2. Assistance in developing, coordinating, and accessing services in the collaborative service plan;
  3. Coordination of collaborative team meetings to develop, modify, and review a collaborative service plan;
  4. Facilitation of the implementation of a collaborative service plan;
  5. Four (4) documented contacts per month, made on separate days, including one (1) face-to-face contact with a recipient and one (1) face-to-face contact with a parent or guardian or primary caregiver. Once every two (2) months, a telephone contact may substitute for a required face-to-face contact with a recipient if a recipient is residing in a therapeutic group residential home located greater than ninety (90) miles from the employment location of a recipient's selected case manager;

6. Monitoring of a recipient's progress and compliance with treatment;

7. Advocating for a recipient to ensure appropriate, timely, and effective treatment and support services;
8. Participation in the development of other human service plans for a recipient;
9. Development of a plan of transition from IMPACT Plus services for a recipient nineteen (19) years of age or older;
10. Provision to a recipient of a list of all IMPACT Plus enrolled subcontractors authorized to provide a service, pursuant to a collaborative service plan, for the purpose of selecting a provider; and
11. Provision to a recipient of information about the availability of a service pursuant to 907 KAR 1:034 if a service pursuant to this administrative regulation is not available.
  - (b) Targeted case management shall not include:
    1. The actual provision of a treatment;
    2. An outreach activity to a potential recipient;
    3. An administrative activity associated with a Medicaid eligibility determination or application processing;
    4. Institutional discharge planning;
    5. A transportation service; or
    6. A duplicate payment made to another public agency or private entity for the same purpose.
  - (c) Except for a crisis stabilization service and as individually approved by the department, a provider of a Medicaid reimbursed targeted case management service [services], excluding the Department for Community Based Services, shall not be reimbursed for [a] both a targeted case management service and an IMPACT Plus service provided to a recipient determined eligible for IMPACT Plus services on or after April 15, 2001.
  - (d) Except for a crisis stabilization service and as individually approved by the department, beginning October 1, 2001, a provider of a Medicaid reimbursed targeted case management service [services], excluding the Department for Community Based Services, shall not be reimbursed for both a targeted case management service and an IMPACT Plus service provided to a recipient determined eligible for IMPACT Plus services prior to or on April 14, 2001.
  - (e) A provider of targeted case management shall be a person who is employed by:
    1. The Department for Community Based Services (DCBS) as a case manager or social worker providing services to an individual in the custody of or under the supervision of DCBS;
    2. A community mental health center as a provider of targeted case management services in accordance with 907 KAR 1:525; or
    3. A behavioral health organization and who shall meet the following requirements [if the person has]:
      - a. Have a bachelor of arts or sciences degree in a behavioral science from an accredited institution. A behavioral science shall include psychology, sociology, social work, human services, or special education;
      - b. Have completed one (1) year of postgraduate employment [providing case management services or] working directly with children. A master's degree in a behavioral science can substitute for the one (1) year of experience;
      - c. Have completed a case management training program provided by the Department for Mental Health and Mental Retardation Services within six (6) months of the date of employment; and
      - d. Receive weekly [Clinical supervision at least twice per month with individual] face-to-face supervision [at least once per month] by a behavioral health professional, a behavioral health professional under clinical supervision, or a case manager who meets the requirements of this subparagraph and has two (2) years of case management experience.
  - (2) A behavioral health evaluation shall:
    - (a) Be a face-to-face evaluation of a recipient, provided in accordance with a recipient's collaborative service plan, to assess a behavioral health disorder and shall include at a minimum:
      1. A multiaxial assessment that includes descriptions of the behaviors or symptoms upon which any diagnosis is based;
      2. Documentation of the date of a recipient's initial diagnosis including the professional and agency providing diagnosis;
      3. A description of the impact of the diagnosis over time; and
      4. A description of all systems for which [that] the recipient needs

coordination of services; and

(b) Be provided by a behavioral health professional.

(3) An individual therapy service shall be:

(a) A face-to-face behavioral health therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient individually; and

(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(4) A group therapy service shall be:

(a) A face-to-face behavioral health therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient in a group setting not to exceed eight (8) individuals; and

(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(5) A collateral service shall be:

(a) A face-to-face behavioral health consultation or service planning meeting with a parent, legal representative, school personnel, or other person with custodial control or supervision of the recipient;

(b) Provided in accordance with a recipient's collaborative service plan or as part of the service planning process; and

(c) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(6) A therapeutic child support service shall be:

(a) A therapeutic service provided in accordance with a recipient's collaborative service plan to assist the recipient or the recipient's family on behalf of the recipient, in understanding, treating, identifying, or coping with the recipient's behavioral health disorder;

(b) Provided directly to a recipient or family and shall include:

1. Therapeutic intervention and support provided to a recipient transitioning to adulthood including:

a. Assessment of a recipient's aptitude for vocational or skill training;

b. Monitoring of a recipient's progress toward transition; or

c. Assistance with developing skills and emotional readiness for an independent living setting.

2. Behavior management skills training including:

a. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;

b. Individual instruction for a recipient or parent, guardian, or caregiver on recognizing or coping with a recipient's disruptive behavior; and

c. Training a recipient and parent, guardian, or caregiver about appropriate behavior and supportive adult intervention; or

3. In-home support including:

a. Assessment of a recipient's living situation;

b. Consultation in a recipient's home with a recipient or a recipient's parent, guardian, or caregiver;

c. Training of a parent, guardian, caregiver, or a family member in therapeutic techniques; and

d. Mentoring with a recipient to model appropriate social behavior or to assist a recipient with building social skills; and

(c) The provider of a therapeutic child support service shall be a person who is employed by a behavioral health organization and:

1. Meets the following minimum qualifications for a professional providing a therapeutic support service:

a. Has a bachelor's degree from an accredited academic institution or be a registered nurse licensed in accordance with KRS 314.041;

b. Has one (1) year experience working with children who have behavioral health needs. A master's degree from an accredited academic institution shall substitute for the required experience;

c. Has sixty (60) hours of training in children's behavioral health or three (3) college level credits from an accredited academic institution in courses related to child development or services to children; and

d. [Is directly supervised by a behavioral health professional or a behavioral health professional under clinical supervision; and

e.] Receives weekly [clinical supervision at least twice per month, with individual] face-to-face [clinical] supervision by a behavioral health professional or a behavioral health professional under clinical supervision [at least once per month]; or

2. Meets the following requirements for a paraprofessional providing a therapeutic support service:

a. Has a high school or general equivalency diploma;

b. Has one (1) year of documented supervised experience working in a human service program or one (1) year of college;

c. Receives weekly [clinical supervision at least twice per month, with individual] face-to-face [clinical] supervision [at least once per month] from a behavioral health professional or a [.] behavioral health professional under clinical supervision; or a person who meets the requirements in paragraph (c)1 of this subsection as a qualified professional for therapeutic support services; and

d. Has six (6) months documented experience working with children in a supervised program setting if the therapeutic support service is provided one (1) on one (1) to a recipient outside a directly supervised setting.

(7) A parent-to-parent support service shall be:

(a) Provided face-to-face to a recipient's parent, guardian, or caregiver and shall consist of:

1. Provision of information about IMPACT Plus services including how to effectively participate in the service planning process and how to access needed services, including emergency services;

2. Assistance in advocating on behalf of the recipient;

3. Provision of information regarding the nature, purpose, and anticipated benefits obtained from accessing targeted case management and other IMPACT Plus services;

4. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;

5. Assistance in understanding how to implement and how to document implementation of a recipient's behavior management plan;

6. Provision of information concerning the scope of responsibility of the principal child-serving agencies;

7. Assistance in the establishment and maintenance of linkages with formal and informal supportive services;

8. Assistance in the establishment of and sustainment of support groups for parents, guardians, and caregivers of recipients; or

9. Assistance in the development of and implementation of a plan to transition the recipient from IMPACT Plus services;

(b) Provided in accordance with a recipient's collaborative service plan by a parent of a child who has a behavioral health disorder and who has received at least one (1) state funded service for that child's disability and who:

1. Is employed by a behavioral health organization;

2. Is approved by the Department for Mental Health and Mental Retardation Services following completion of ten (10) hours of initial and continuing annual training;

3. Is directly supervised by a behavioral health professional or a [.] behavioral health professional under clinical supervision; or a person who meets the requirements in subsection (6)(c)1 of this section to provide a professional support service; and

4. Receives weekly [clinical supervision at least twice per month, with individual] face-to-face [clinical] supervision [at least once per month] from a behavioral health professional or a [.] behavioral health professional under clinical supervision; or a person who meets the requirements in subsection (6)(c)1 of this section as a qualified professional of therapeutic support services; and

(c) Provided by a person not related to or living with the recipient receiving the parent to parent support service.

(8) An after-school or summer program service shall:

(a) Consist of a structured program of individual and group therapeutic activities that focus on the use of appropriate behaviors and social skills in group activities with other children that includes the following:

1. Individual and group therapies;

2. Behavior management and social skills training;

3. Independent living skills training for recipients fourteen (14) years of age and older;

4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the individual's needs; and

5. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours;

(b) Be provided in accordance with the recipient's collaborative service plan;

(c) Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health



professional or behavioral health professional under clinical supervision; and

(d) Be provided by a behavioral health professional or a behavioral health organization and shall have daily on-site supervision by a behavioral health professional or a behavioral health professional under clinical supervision.

(9) A day treatment service shall:

(a) Consist of an organized, behavioral health program of treatment and rehabilitative services;

(b) Have unified policies and procedures approved by the local education authority and the provider of the day treatment service that shall address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated case planning and include the following:

1. Individual and group therapies;
2. Behavior management and social skill training;
3. Independent living skill training for recipients fourteen (14) years of age and older;
4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the recipient's needs;
5. Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
6. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours;

(c) Be provided:

1. In collaboration with the special education services or other available education services of the local education authority;
2. On school days or during scheduled breaks;
3. In coordination with the recipient's individual educational plan and not as homebound instruction;
4. By a behavioral health organization;
5. Under the supervision of a behavioral health professional or a behavioral health professional under clinical supervision;
6. Through a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:
  - a. Appropriately licensed teachers and provision for their professional development;

b. Educational supports (classroom aides and textbooks);

c. Educational facilities;

d. Physical education and recreational therapies;

e. Transportation; and

f. Transition planning.

7. In accordance with a recipient's collaborative service plan;

(d) Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

(e) Exclude services covered by 907 KAR 1:715.

(10) A partial hospitalization service shall:

(a) Consist of a therapeutic environment with an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs that shall:

1. Have unified policies and procedures that address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated case planning;
2. Offer less than twenty-four (24) hour daily care five (5) to seven (7) days per week;
3. Include the following:
  - a. Daily oversight and management by a psychiatrist that includes daily communication with staff delivering direct services and face-to-face contact with the recipient one (1) or more times per week;

b. Continuous nursing coverage;

c. Multidisciplinary treatment team;

d. Rehabilitative therapy;

e. Individual and group therapies;

f. Medication evaluation, education, and management;

g. Behavior management and social skills training;

h. Treatment-based schooling provided by the local education authority as required by law;

i. Scheduled activities that promote family involvement; and

j. The development with a recipient and a parent or caregiver of a crisis plan for nonprogram hours;

(b) Be provided by a hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016 or 902 KAR 20:170 or a community mental health center. A provider shall have a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:

1. Appropriately licensed teachers and provision for their professional development;

2. Educational supports (classroom aides and textbooks);

3. Educational facilities;

4. Physical education and recreational therapies;

5. Transportation; and

6. Transition planning;

(c) Be provided in accordance with a collaborative service plan;

(d) Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

(e) Not include services covered by 907 KAR 1:715;

(11) An intensive outpatient behavioral health service shall:

(a) Consist of a structured behavioral health program of individual and group therapeutic activities provided in accordance with a recipient's collaborative service plan;

(b) Be provided by a provider of an intensive outpatient behavioral health service that shall have a minimum recipient to staff ratio of four (4) children to one (1) staff;

(c) Be provided under the supervision of a behavioral health professional or a behavioral health professional under clinical supervision; and

(d) Be provided at least three (3) times per week for a minimum of two (2) hours per day by:

1. A behavioral health professional;

2. A behavioral health professional under clinical supervision;

3. A behavioral health organization; or

4. A facility licensed as a nonmedical and nonhospital based alcohol or other drug abuse treatment program provider in accordance with 908 KAR 1:370 within its scope of practice.

(12) A therapeutic foster care service shall:

(a) Consist of a therapeutic environment and twenty-four (24) hour supervision and treatment in a family home by a therapeutic foster parent who shall:

1. Be employed or contracted and supervised by a child-placing agency licensed in accordance with 922 KAR 1:310;

2. Complete thirty (30) hours of preservice training using a curriculum approved by the Departments for Community Based Services and Mental Health and Mental Retardation Services;

3. Receive twenty-four (24) hours of training annually related to the care of a child with complex treatment needs of which no more than six (6) hours shall be provided through individual consultation;

4. Daily implement the behavior management plan and document behaviors, responses and interventions;

5. Prepare a weekly progress summary; and

6. Receive [weekly] face-to-face [clinical] supervision and support in the therapeutic foster care home every other week by a behavioral health professional or a behavioral health professional under clinical supervision who is employed by a child-placing agency and who shall develop and monitor an individualized treatment plan that shall include:

a. A behavior management plan;

b. A crisis action plan that progresses through a continuum of care that begins with the use of natural supports and progresses through low intensity services to high intensity services or inpatient services;

c. Identified supports for the foster parent such as a foster parent support group; and

d. A plan for the involvement and visitation of a recipient with the birth family, guardian, or other significant persons unless prohibited by the court, including overnight off-site family visits pursuant to the plan; and

(b) Be provided in accordance with the collaborative service plan.

(13) A therapeutic group residential care service shall:

(a) Consist of a therapeutic environment and twenty-four (24) hour supervision and behavioral health treatment in a group residential facility that shall include:

1. A program of individual and group therapies;



2. Behavior management and social skills training;
3. Scheduled activities that promote family involvement;
4. Independent living skills for recipients age fourteen (14) years of age and older;

5. After school and summer programs; and

6. Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services;

(b) Be directed by a residential treatment plan that is developed, monitored and updated in response to any change in the recipient's condition, by a behavioral health professional or a behavioral health professional under clinical supervision who is employed by a child-caring agency and at a minimum includes:

1. An individualized behavior management plan;

2. A crisis intervention plan; and

3. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant persons unless prohibited by the court including overnight off-site family visits;

(c) Have professional and support staff that daily implements the behavior management plan and documents observed behaviors, responses and interventions and prepare a weekly summary note of status. Support staff shall receive weekly supervision by a behavioral health professional or a behavioral health professional under clinical supervision; and

(d) Be provided in accordance with a collaborative service plan by:

1. A child-caring facility licensed in accordance with 922 KAR 1:300; or

2. A facility licensed as a nonmedical and nonhospital based alcohol or other drug abuse treatment program provider in accordance with 908 KAR 1:370 within the scope of its practice.

(14) A residential crisis stabilization service shall:

(a) Consist of a brief stay not to exceed ten (10) consecutive days in a therapeutic environment that has an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs and shall include:

1. A face-to-face behavioral health assessment by a behavioral health professional or a behavioral health professional under clinical supervision;

2. Individual and group therapies and other behavioral health interventions necessary to stabilize the recipient; and

3. Discharge planning to link a recipient with community services and supports;

(b) Be provided by:

1. A child-caring facility licensed in accordance with 922 KAR 1:300;

2. A hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016 or 902 KAR 20:170; or

3. A community mental health center;

(c) Have a behavioral health professional with full-time clinical responsibility for the residential crisis stabilization program; and

(d) Have a behavioral health professional or a behavioral health professional under clinical supervision that shall have daily, face-to-face contact with the recipient. There shall be a behavioral health professional or a behavioral health professional under clinical supervision on site or on call at all times.

(15) A wilderness camp service shall:

(a) Consist of a structured, overnight program in an outdoor environment, of individual and group therapeutic activities that build social competencies, increase self-esteem, and assist recipients to learn and practice skills that provide for greater control of personal behaviors;

(b) Be provided by a child-caring facility licensed in accordance with 922 KAR 1:300;

(c) Have continuous on-site supervision by a behavioral health professional or a behavioral health professional under clinical supervision; and

(d) Be provided in accordance with a recipient's collaborative service plan.

Section 7. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall apply for services provided in accordance with this administrative regulation.

(1) The Title V agency shall provide a service either directly or

through an agreement with:

(a) The Kentucky Department for Community Based Services as the state agency responsible for the provision of child and adult protective services; or

(b) The Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health and substance abuse services in the state.

(2) A service provided directly by the Title V agency, the Department for Community Based Services, the Department for Mental Health and Mental Retardation Services, or a subcontractor shall meet the requirements established in this administrative regulation.

(3) A subcontractor or person employed by a subcontractor to provide services pursuant to this administrative regulation shall not:

(a) Have been convicted of a felony offense;

(b) Have been convicted of a misdemeanor offense involving an illegal substance within the five (5) years previous to becoming a subcontractor or person employed by a subcontractor to provide services;

(c) Have been convicted of or have entered a plea of guilty to, a sex crime as defined in KRS 17.165;

(d) Have been convicted as or have entered a plea of guilty as, a "violent offender" as defined in KRS 17.165; or

(e) Have been the perpetrator identified in a report of abuse, neglect, or exploitation of a person that has been substantiated by the Department for Community Based Services.

(4) A provider or subcontractor shall maintain medical records that shall:

(a) Be current, readily retrievable, organized, complete, and legible, and shall reflect sound medical recordkeeping practice;

(b) Include a written record that is dated and signed for each individual encounter that shall include:

1. The collaborative service plan dated and signed by members of the team specified in Section 5(6)(b) of this administrative regulation; and

2. Documentation of a service that shall include:

a. A written description of the service that includes how the service addressees the collaborative service plan goals and any progress made by the recipient;

b. The date of the service;

c. The number of units of the service or starting and ending times;

d. The place of the service;

e. The name and qualification of the person who provided the service; and

f. The signature and date of signature of the person who provided the service and the person providing clinical supervision if required for the service;

(c) Be kept in a locked file and treated as confidential in accordance with KRS 194A.060, 434.840-434.860, 422.317 and 42 CFR 431 Subpart F; and

(d) Be furnished upon request and made available for inspection and copying by department personnel or other agencies in accordance with Section 8 of this administrative regulation.

(5) A provider or subcontractor of a targeted case management service shall maintain medical records that shall document provision of a case management service that shall include:

(a) A written targeted case management assessment in accordance with Section 6 of this administrative regulation;

(b) A contact list that includes the date, place, and content of contacts made with the recipient, parent, guardian, or caregiver, and other members of the team described in Section 5(6)(b) of this administrative regulation; and

(c) A monthly case management summary that includes:

1. Progress by the recipient in accessing services in the collaborative service plan;

2. The recipient's progress toward the goals specified in the collaborative service plan and an explanation of failure to progress;

3. The recipient's response to services provided pursuant to the collaborative service plan and a change in services to address failure to progress or problems in response;

4. Documentation of the implementation of subsection (7) of this section;

5. Documentation of permission by the parent or guardian to release and receive information about the recipient in accordance with applicable state and federal law;

6. Documentation of a referral for a service identified in a collaborative service plan in which the person providing a targeted case management service participated; and

7. A plan for delivery of targeted case management services for the following month.

(6) A subcontractor as part of an application process to provide services shall provide:

(a) Verification of a state police records check or a signed release to enable the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services to request a state police records check and payment for the cost of obtaining the records check; and

(b) A listing of the services the subcontractor intends to provide that shall describe for each service:

1. Staff qualifications, supervision, and training; and

2. Oversight of staff and services by a behavioral health professional.

(7) The Departments for Community Based Services and Mental Health and Mental Retardation Services shall establish and annually evaluate a quality improvement program approved by the department that monitors and evaluates, on a continuing basis, access, continuity of care and behavioral health care outcomes relating to a service provided directly or by a subcontractor in accordance with this administrative regulation.

(a) The monitoring and evaluation shall be based upon:

1. A recipient's demographic characteristics, risk factors, functional status, comorbidities and behavioral health status;

2. A recipient's access to a service;

3. Utilization and cost of a service;

4. A recipient's satisfaction with a service; and

5. Adverse incidents and complications.

(b) Behavioral health outcomes shall include:

1. Reduction of behavioral disability and restoration of an individual to the highest possible functioning level; and

2. Provision of a service in the least confining setting appropriate for the required treatment or care.

(c) A subcontractor of the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services shall:

1. Measure and report an outcome of the provision of a service;

2. Have a program for the improvement of the quality of a service; and

3. Monitor the utilization of a service.

(8) A recipient shall be informed of the right to select, and shall select a subcontractor to provide a service covered by this administrative regulation from a list of subcontractors approved by the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services to provide the service. A parent, custodial parent, person exercising custodial control or supervision as defined in KRS 600.020, or agency with legal responsibility for an individual by virtue of voluntary commitment or an emergency or temporary custody order shall be allowed to act on behalf of the recipient in selecting a subcontractor for services.

(9) A provider or subcontractor shall maintain documentation of services provided and billed for a minimum of five (5) years or until an audit dispute or issue is resolved, whichever is longer.

Section 8. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall provide to the department or a representative of an agency or office identified in subsection (4) of this section, upon request:

(a) Medical records and other information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; and

(c) Information documenting the cost of the service.

(2) The department shall have the right to inspect medical and other records on site or to require the provider or subcontractor to provide written or electronic documentation for review as determined to be appropriate by the department.

(3) The department shall have the right to interview recipients, parents, guardians, primary caregivers or current or previous provider or subcontractor staff with regard to a service provided in accordance

with Section 6 of this administrative regulation.

(4) Access to provider or subcontractor records relating to a service provided shall be provided to:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Attorney General's Office;

(c) The state Attorney General's Office;

(d) The state Auditor's Office;

(e) The Office of the Inspector General; [or]

(f) The department; or

(g) The Department for Mental Health and Mental Retardation Services and the Department for Community Based Services as contractors of services.

Section 9. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the service as specified in this section. The department shall not reimburse administrative and indirect overhead costs of the Departments for Public Health, Mental Health and Mental Retardation Services, or Community Based Services.

(1) Payment shall be based on actual expenditures incurred for providing a service by the Title V agency, the Department for Mental Health and Mental Retardation Services or the Department for Community Based Services.

(2) The Title V agency, the Department for Community Based Services and the Department for Mental Health and Mental Retardation Services shall maintain service and cost records to document that payments for services provided do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records of a payment made to a subcontractor for a service provided to a recipient that shall include:

(a) A recipient's name;

(b) A recipient's Medicaid identification number;

(c) Date, service, and amount of payment for the service; and

(d) Information necessary for the accountable administration of the program.

(4) The department shall not reimburse an after-school or a summer program service for a recipient residing in a therapeutic group residential setting.

(5) The payment rate for a service to be provided by a subcontractor shall be negotiated between the provider and the subcontractor.

(a) A negotiated rate for a subcontracted service shall not be effective unless approved by the Department for Medicaid Services.

(b) To facilitate the negotiated rate approval process, the Department for Medicaid Services' representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(c) Approval of a negotiated rate shall be requested in advance of the provision of a service. If it is urgent for a subcontractor to render a service prior to the Department for Medicaid Services' approval of a negotiated rate the subcontractor shall assume risk of nonpayment. The subcontractor shall have thirty (30) calendar days to negotiate an approved rate before the service shall be considered a nonreimbursable service.

(6) A billable unit of service shall be:

(a) Fifteen (15) minutes for:

1. An individual therapy service;

2. A group therapy service; or

3. A collateral service;

(b) One (1) hour for:

1. A behavioral health evaluation;

2. A therapeutic child support service;

3. A parent to parent support service;

4. An after school or summer program service;

5. A day treatment service;

6. A partial hospitalization service; or

7. An intensive outpatient behavioral health service;

(c) One (1) day for:

1. A therapeutic foster care service;

2. A therapeutic residential care service;

3. A residential crisis stabilization service; or

4. A wilderness camp service; or

- (d) One (1) month for targeted case management;
- (7) The following costs shall not be reimbursed:
  - (a) Room and board; and
  - (b) Educational, vocational or transportation services.
- (8) Failure to comply with the requirements established in this administrative regulation in the provision of covered services shall subject the provider or subcontractor to recoupment by the department.

Section 10. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) "The Diagnostic and Statistical Manual of Mental Disorders, fourth edition", DSM-IV™; Copyright © 1994, American Psychiatric Association; published by the American Psychiatric Association, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ["Department" means the Department for Medicaid Services.

(2) "Impact-Plus" means the program of behavioral health services provided through an agreement with the state Title V agency.

(3) "Licensed practitioner of the healing arts" means a practitioner of the healing arts who is:

- (a) Licensed in accordance with KRS 311.274; or
- (b) Exempt from licensure pursuant to KRS 335.010(4).

(4) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed or certified practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of a behavioral disability and restoration and maintenance of a recipient to his highest possible functional level.

(5) "Targeted case management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services pursuant to 42 USC 1396n.

(6) "Title V agency" means the Department for Public Health.

Section 2. Interagency Agreement. Services provided pursuant to Section 3 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of behavioral disability and restoration of a recipient to his highest possible functional level; and which shall be within the following general areas:

(1) Targeted case management services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community-Based Services established in 905 KAR Chapter 1 to be defined as a child:

- 1.a. In the custody of the state;
- b. Under the supervision of the state; or
- c. At risk of being in the custody of the state; and
- 2.a. In an institution; or
- b. At risk of institutionalization; or

(b) A Medicaid-eligible child under age twenty-one (21) who is:

- 1. In an institution; or
- 2. At risk of institutionalization.

(2) A service covered as a targeted case management service:

(a) May include:

- 1. Assessment of family strengths and needs;
- 2. Assistance in developing, coordinating, and accessing services in the individual service plan or family support plan;
- 3. Coordination of interagency team meetings to develop a family support plan;
- 4. Facilitation of the implementation of a child and family service

plan;

5. Monitoring progress and performing advocacy to assure appropriate, timely, and productive treatment and support services; or

6. Participation in the development of other human service plans for the child; and

(b) Shall not include:

1. The actual provision of a treatment;

2. An outreach activity to a potential client;

3. An administrative activity associated with a Medicaid eligibility determination or application processing;

4. Institutional discharge planning;

5. A transportation service; or

6. A duplicate payment made to another public agency or private entity for the same purpose.

(3) Rehabilitative services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community-Based Services established in 905 KAR Chapter 1 to be defined as a child:

1.a. In the custody of the state;

b. Under the supervision of the state; or

c. At risk of being in the custody of the state; and

2.a. In an institution; or

b. At risk of institutionalization; or

(b) A Medicaid-eligible child under age twenty-one (21) who is:

1. In an institution; or

2. At risk of institutionalization.

(4) A service covered as a rehabilitative service shall be one (1) of the following:

(a) Individual services;

(b) Group services;

(c) Collateral services;

(d) After school or summer program services;

(e) Day treatment services;

(f) Partial hospitalization services;

(g) Intensive out-patient services;

(h) Therapeutic foster care services;

(i) Therapeutic group residential care services;

(j) Residential crisis stabilization services; or

(k) Wilderness camp.

Section 4. Provider Qualifications and Conditions for Participation.

The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to Section 3 of this administrative regulation:

(1) The Title V agency shall provide a service:

(a) Directly;

(b) Through agreement with the Kentucky Department for Community-Based Services as the state agency responsible for the provision of child and adult protective services; or

(c) Through agreement with the Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health and substance abuse services in the state.

(2) A service which is provided directly by the Title V agency or by the Departments for Community-Based Services or Mental Health and Mental Retardation Services or a subcontractor shall meet the requirements established in the Impact-Plus Manual for the service and shall include:

(a) A plan of care;

(b) Documentation of supervision of staff as appropriate; and

(c) Documentation of services provided.

(3) A provider or subcontractor shall maintain records to document services provided:

(a) For not less than five (5) years; or

(b) Until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall provide to the department or a representative of an agency or office listed in subsection (4) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

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(b) Information regarding a payment claimed by the provider for furnishing a service; or

(c) Information documenting the cost of the service.

(2) Inspection shall be on-site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department may interview:

(a) Current or previous provider or subcontractor staff with regard to a service provided pursuant to Section 3 of this administrative regulation; or

(b) A recipient of a targeted case management or rehabilitative service with regard to a service received pursuant to Section 3 of this administrative regulation.

(4) Access to provider or subcontractor records relating to a service provided shall be required for:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Attorney General's Office;

(c) The state Attorney General's Office;

(d) The state Auditor's Office; or

(e) The Office of the Inspector General.

Section 6. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the service as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health, Mental Health and Mental Retardation Services or Community-Based Services shall not be reimbursed by the department.

(1) A payment shall be based on actual expenditures incurred for the provision of the service by the Title V agency or the Departments for Mental Health and Mental Retardation Services or Community Based Services.

(2) For a service provided directly by the Title V agency or by the Departments for Community-Based Services or Mental Health and Mental Retardation Services, the appropriate agency shall maintain service and cost records to document that payments do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records showing a payment made to a subcontractor on an individual client per service basis.

(4) The payment rate for a subcontractor-provided service shall be negotiated between the provider and the subcontractor.

(a) A negotiated rate for a subcontracted service shall not be effective unless approved by the department.

(b) To facilitate the negotiated rate approval process, the department's representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(5) Depending on the service provided, a billable unit of service shall be in increments of:

(a) Fifteen (15) minutes;

(b) One (1) hour;

(c) One (1) day; or

(d) One (1) month.

Section 7. Incorporation by Reference. (1) "Impact Plus Manual"; Department for Medicaid Services, September 1998, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 2, 2001

FILED WITH LRC: February 2, 2001 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides coverage and payment criteria for IMPACT Plus

services.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by KRS 205.520.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established by state statute, KRS 205.520, for the provision of medically necessary health services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes criteria for determining "at risk of institutionalization" and criteria for determining when a recipient is no longer eligible for IMPACT Plus services. It expands service-planning requirements, identifies additional requirements for service coverage, expands service definitions and service provision requirements, prohibits provision of services by specified groups or individuals, increases medical records requirements, increases reporting requirements and requires establishment of quality improvement programs by providers and subcontractors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide uniform access to medically necessary services to the targeted population. It also provides the Department for Medicaid Services the necessary tools for monitoring services and to ensure delivery of quality services to the targeted population.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 205.520 because it provides for the administration of Title XIX of the Federal Social Security Act by the Department for Medicaid Services. The amendment provides governing rules for administering the IMPACT Plus program. The amended regulation conforms to KRS 205.520 by establishing necessary rules for administering the IMPACT Plus program, a program necessary to protect, develop, and maintain the health of the individual citizens of Kentucky and to qualify for federal funds and to cooperate with other state agencies for the proper administration of the cabinets programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the authorizing statutes by establishing criteria for determining "at risk of institutionalization" which provides for uniform access to medically necessary services for the targeted population. It also establishes the necessary policy to protect the health of the individual citizens of Kentucky (within the targeted population). Finally, this amendment provides for cooperation with other state agencies, DMHMRS and DCBS, utilizing their expertise and resources for the effective administration of cabinet programs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment to 907 KAR 3:030 affects approximately 3000 individuals currently receiving IMPACT Plus services, the Department for Mental Health and Mental Retardation Services (DMHMRS), the Department for Community Based Services (DCBS), and approximately 300 subcontractors who currently provide direct services through the IMPACT Plus program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The approximately 3000 individuals currently receiving services through the IMPACT Plus program will be reassessed using the newly established criteria for determining "at risk for institutionalization." The reassessment will result in discontinuation of IMPACT Plus services for those individuals who no longer meet eligibility requirements and increased service planning requirements for those who continue to meet eligibility requirements. Subcontractors of IMPACT Plus services must meet expanded service provision and medical records requirements. They also must develop and implement quality improvement programs and

develop systems for outcome measurement. DMHMRS and DCBS, Medicaid providers of IMPACT Plus services, have additional tracking and reporting requirements, must develop and implement a quality improvement program and must develop an outcome measurement system.

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

(a) Initially: No additional cost associated with the initial implementation of the amendment to this regulation.

(b) On a continuing basis: The Impact Plus program was designed to be budget neutral. Impact Plus services were to be funded by a reallocation of funds from inpatient hospitalization. This was achieved initially. However, the growth trend has eclipsed the reallocation of funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and State matching funds. The amendment to this regulation will be budget neutral. Funding for this program was included in the enacted budget of the 2000 General Assembly.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 907 KAR 3:030 does not necessitate any increase in fees or require additional funding for implementation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 2001

OFFICE OF ATTORNEY GENERAL  
Child Sexual Abuse and Exploitation Prevention Board  
Victims Advocacy Division  
(Amendment)

40 KAR 6:020. Funding assistance for child sexual abuse medical examinations.

RELATES TO: KRS 15.900, 15.920, 15.935(1)(b), 41.400

STATUTORY AUTHORITY: KRS 15.180, 15.935 (1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.935(1)(b) authorizes the Child Sexual Abuse and Exploitation Prevention Board to fund, from the Child Victims' Trust Fund created pursuant to KRS 41.400, the cost of child sexual abuse medical examinations to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for the case management aspects of child sexual abuse medical examinations in accordance with KRS 15.935.

Section 1. Definitions. (1) "Applicant" means an eligible provider applying for child sexual abuse medical examination funding assistance.

(2) "Case management" means all administrative aspects of the child sexual abuse medical examination and includes the following:

- (a) Transcription of records;
- (b) Scheduling appointments;
- (c) Coordination of services;
- (d) Making referrals for services; and
- (e) Consultation with multidisciplinary teams, court personnel, officers of the court, parents or guardians, social workers, law enforcement and any other party involved in the treatment or protection of the child.

(3) "Child" is defined by KRS 15.900(1).

(4) "Child sexual abuse medical examination" means a complete physical examination of a child with a special focus on the anal or genital area or oral cavity and the case management associated with the physical examination.

(5) "Eligible provider" means a private, nonprofit agency whose primary purpose is to provide, either directly or through contract, prevention, intervention, and treatment services to sexually abused children and their families within a child-focused multidisciplinary team approach.

(6) "State board" is defined by KRS 15.900(4).

Section 2. Application for Child Sexual Abuse Medical Examination Funding Assistance. (1) An eligible provider may annually apply to the state board for child sexual abuse medical examination funding assistance to be provided from the Child Victims' Trust Fund created pursuant to KRS 41.400. Funding shall only be used to pay for the case-management aspects of a child sexual abuse medical examination. The term of the financial assistance shall be the state fiscal year.

(2) An applicant for child sexual abuse medical examination funding assistance shall make application on "Application for Child Sexual Abuse Medical Examination Funding Assistance" or submit an application electronically where that capability is available.

Section 3. Funding Requirements. (1) The total funds annually awarded by the state board to each applicant for child sexual abuse medical examination funding assistance shall be limited by the availability of funds and board approval.

(2) Reimbursement for the case management aspects of a child sexual abuse medical examination shall not exceed \$150 per case.

(3) Applicants for funding assistance shall provide assurances to the state board that:

(a) Funding assistance will be used solely for the purpose of reimbursing the case management aspects of child sexual abuse medical examinations;

(b) Funding assistance will supplement and not replace existing

funds received by the applicant from other sources for child sexual abuse medical examinations;

(c) Funding assistance will not be used to reimburse services for which there is private health insurance coverage, or where another third party has a legal obligation to pay; and

(d) Persons performing any child sexual abuse medical examination services will comply with all applicable state and federal licensing or certification requirements.

Section 4. Funding Criteria. Allocation of funding assistance for child sexual abuse medical examinations shall be based on funds available in the Child Victims' Trust Fund created pursuant to KRS 41.400 and the following criteria:

(1) Whether the applicant is currently providing or plans to provide child sexual abuse medical examinations either directly or by contract with medical providers;

(2) Whether the applicant demonstrates a need for financial assistance to be used to provide medical examinations in the geographic area served by the applicant; and

(3) Whether the applicant has the demonstrated ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant.

Section 5. Reporting Requirements. No later than ninety (90) days after the end of the state fiscal year, applicants receiving financial assistance under this administrative regulation shall submit a final report to the state board containing the following information:

(1) The applicant's total child sexual abuse medical examination budget for the period funded, which includes the amount and sources of revenue for the child sexual abuse medical examinations and the total amount expended on the examinations; and

(2) The number of child sexual abuse medical examinations conducted for the period funded; and

~~(3) An itemized list of the actual costs for the child sexual abuse medical examinations conducted, including the fees paid to medical personnel, laboratory fees, billing, administrative costs, and the costs for any special procedures conducted.~~

Section 6. Appeals. Any applicant denied available funding under this administrative regulation shall have a right to appeal pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Application for Child Sexual Abuse Medical Examination Funding Assistance", December 2000 [~~October-1999~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Victims Advocacy Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

A. B. CHANDLER III, Attorney General

APPROVED BY AGENCY: January 17, 2001

FILED WITH LRC: January 18, 2001 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on March 21, 2001 in Conference Room A, Attorney General's Office, Second Floor, 1024 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If a person does not wish to be heard at the public hearing, that person 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: John W. Patterson, Victim Advocate, Attor-

ney General's Office, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, Phone (502) 696-5312, Fax (502) 573-8315.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John W. Patterson

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: It authorizes, and provides a procedure for, the Child Sexual Abuse and Exploitation Prevention Board to fund from the Child Victims' Trust Fund the cost of case management services associated with child sexual abuse medical examinations where those services are not eligible to be paid from other sources.

(b) The necessity of this administrative regulation: KRS 15.935(1)(b) authorizes the Child Sexual Abuse and Exploitation Prevention Board to provide funding from the Child Victims' Trust Fund for child sexual abuse medical examinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines who is eligible to receive financial assistance, the services that qualify for payment, and the procedures for applying for funding of child sexual abuse examinations in accord with KRS 15.935(1) which establishes the purposes for which Child Victims' Trust Fund dollars may be spent.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing standards and procedures it provides guidance to eligible providers of child sexual abuse medical examination services when applying for funding and maintaining the availability of these services.

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

(a) How the amendment will change this existing administrative regulation: The amendment will shorten and simplify the application process by reducing the information required from the applicant and offering an alternative application medium. It also will reduce the amount of data required from the provider for the annual report.

(b) The necessity of the amendment to this administrative regulation: This amendment reflects changes in the way child sexual abuse medical examinations are paid for in Kentucky that occurred since the adoption of the regulation. A centralized payment system has been established to coordinate the billing and reimbursement for medical exams using a single fiscal agent under the supervision of the Department for Medicaid Services. The Attorney General's Office and the Department for Medicaid Services have entered into an agreement by which the Attorney General's Office will receive from the fiscal agent information previously submitted by the provider.

(c) How the amendment conforms to the content of the authorizing statutes: No changes are made in the purpose of, or criteria for, expenditures on examinations. Only application and reporting procedures for eligible providers are modified to reflect current conditions.

(d) How the amendment will assist in the effective administration of the statutes: By offering a simplified application process, including an alternative application medium, plus eliminating reporting of duplicative information, it will encourage more eligible providers to apply for assistance thereby increasing the availability of child sexual abuse medical examinations as well as helping to retain the services of current providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect directly potential provider organizations estimated to number between 15 and 20. It will indirectly affect an estimated 1,600 children by making medical examinations more available when needed.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: A provider's application process will be simplified, and reporting requirements eased thereby reducing its workload and encouraging more providers to apply for funding to supply services. With more providers available across the state, children will have greater access to medical examinations when needed and at less cost to parents in travel time and money.

(5) Provide an estimate of how much it will cost to implement this administrative regulation initially and on a continuing basis:

(a) Initially: Administrative tasks are performed by staff of the Attorney General's Office at a very small initial and continuing cost - less than 10% of one staff member's time.

(b) On a continuing basis: The cost is expected to be the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Staff expense is supported through the Attorney General's budget using funds appropriated by the General Assembly.

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

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

(9) TIERING: Is tiering applied? No. The case management services to be provided are basically the same for each applicant for funding.

## REVENUE CABINET Department of Law Division of Tax Policy (Amendment)

### 103 KAR 1:060. Electronic fund [funds] transfer.

RELATES TO: KRS 131.155, 131.180, 131.183, 131.990 [1994 Ky. Acts ch. 4, sec. 1]

STATUTORY AUTHORITY: KRS 131.130(1), 131.155(2), (3) [1994 Ky. Acts ch. 4, sec. 1]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Revenue Cabinet to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 131.155(3) requires the Revenue Cabinet to promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the cabinet. KRS 131.155(2) authorizes the Revenue Cabinet to prescribe means of electronic fund transfer of taxes and fees. This administrative regulation establishes requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer. (Under the authority of 1994 Ky. Acts ch. 4, sec. 1, this administrative regulation prescribes the electronic funds transfer requirements for certain payments of tax.)

Section 1. Definitions. (1) "Debit method" means the method of payment where the taxpayer or his authorized agent authorizes the Revenue Cabinet or its authorized agent to initiate the transfer of a set amount of funds on a set date from a taxpayer or agent-controlled account in a financial institution to satisfy taxes or fees due based on required information transmitted to the cabinet prior to the cabinet effecting the transfer.

(2) "Credit method" means the method of payment where the taxpayer or his authorized agent initiates the transfer of funds from the taxpayer or agent controlled account in a financial institution to the designated Commonwealth bank account to satisfy taxes or fees due.

(3) "Lookback period" means the twelve (12) month period ending on September 30 [December 31] of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 2001 [1994] is the period beginning on October 1, 1999 [January 1, 1993] and ending on September 30, 2000 [December 31, 1993].

Section 2. Reporting and Payment Requirements. (1) Any taxpayer whose average payment per reporting period [monthly liability] during the lookback period for the sales and use tax required to be collected or paid under KRS Chapter 139 exceeds \$25,000 or any employer whose average payment per reporting period [monthly liability] during the lookback period for the income tax required to be withheld under KRS 141.310 exceeds \$25,000 shall submit to the cabinet a properly executed Revenue Form 10A070 "Authorization Agreement for Electronic Funds Transfer" stating the method requested to be used and upon written approval of the method by the cabinet shall pay



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the tax by electronic fund [funds] transfer using the debit method or other method approved by the cabinet, including the credit method, provided the method complies with the guidelines set out in subsection (3) of this section.

(2) Persons required by KRS 131.155(2) to remit funds by electronic fund transfer on behalf of other taxpayers shall conform to the provisions of subsection (1) of this section. In addition, such persons shall, for each taxpayer represented and for each payment period, provide the information necessary to properly credit the account as required in subsection (3) of this section.

(3) Execution of any electronic fund [funds] transfer transaction shall conform to the guidelines and procedures of each participating financial institution. Any electronic transfer of funds must provide information necessary to properly credit the taxpayer account, including:

- (a) Taxpayer account number;
- (b) Type tax code;
- (c) Tax period end date;
- (d) Amount of transfer;
- (e) Date of payment transfer; and
- (f) Any other information deemed necessary by the cabinet.

(4) The cabinet may withdraw approval to utilize the credit method or any method employed other than the debit method if the taxpayer or his authorized agent fails to provide required information necessary to effect the transfer and credit funds to the proper taxpayer account. [(3)] Any taxpayer or employer may volunteer to pay the tax by electronic fund [funds] transfer by making a written request to the cabinet and, if approved by the cabinet, shall be subject to the same requirements as any taxpayer or employer required to electronically transfer the tax.

Section 3. Alternative Payment Method. (1) A taxpayer or authorized agent for a taxpayer or taxpayers shall make written request to remit funds by electronic means other than the previously-approved method.

(2) Approval of such method shall be at the discretion of the cabinet and limited to demonstration of extreme circumstances.

- (3) The following information must be submitted with the request:
- (a) Reason for requesting alternate remittance method; and
  - (b) Method of remittance proposed.

Section 4. Procedures. (1) Due date of electronic fund [funds] transfer.

(a) The due date of any electronic fund [funds] transfer for any tax shall be governed by the applicable law and regulations pertaining to that tax.

(b) The initiation date recorded in the automated clearing house system by the originating financial depository institution for any electronic fund [funds] transfer shall be the payment date.

(2) Manner of electronic fund [funds] transfer. Separate electronic fund [funds] transfers shall be made for each type tax account number designated as an electronic fund transfer account [electronically transferred] under the provisions of KRS Chapter 131.

(3) Overpayment or underpayment of tax. Any overpayment of tax may be applied toward the amount due for the next tax period [to the next amount electronically transferred] or may be refunded upon request by the taxpayer or employer. If the amount of tax liability for a taxable period exceeds the total amount electronically transferred for the same period, the taxpayer or employer shall pay the additional tax due [as determined on the applicable reconciliation return. The taxpayer or employer shall not pay the additional tax due electronically].

Section 5. [4.] Change in Reporting and Payment Requirements for Electronic Fund [Funds] Transfer. After the cabinet makes a determination regarding a taxpayer's or employer's reporting and payment requirements for electronic fund [funds] transfer, the taxpayer or employer shall comply with the requirements until a written request to change is filed with and approved by the cabinet.

Section 6. [5.] Penalties and Interest. Any taxpayer or employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and 131.990 and interest as provided in KRS 131.183.

Section 7. [6.] This administrative regulation shall apply to any taxable or payroll period beginning after December 31, 2000 [1994].

Section 8. Incorporation by Reference. (1) Revenue Form 10A070 "Authorization Agreement for EFT", January 2001, is incorporated by reference.

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

F. MICHAEL HAYDON, Secretary

APPROVED BY AGENCY: January 25, 2001

FILED WITH LRC: January 26, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on March 29, 2001 at 10 a.m. in Training Room A, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 2001 of their intent to attend. If no notification of intent to attend the hearing is received by March 22, 2001, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Edward A. Mattingly, Tax Consultant, Division of Tax Policy, Revenue Cabinet, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601, (502) 564-6843, extension 4431, FAX (502) 564-9565, EMAIL eddie.mattingly@mail.state.ky.us.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

(b) The necessity of this administrative regulation: KRS 131.155(2) authorizes the Revenue Cabinet to promulgate administrative regulations prescribing means of electronic fund transfer of taxes and fees. This regulation establishes requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

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

(a) How the amendment will change this existing administrative regulation: Defines "debit method" and "credit method" of electronic fund transfers. Pursuant to KRS 131.155, establishes guidelines for electronic transfer of funds to the Revenue Cabinet, including the specific taxpayer identifying information which must accompany each transfer. Provides mechanism to request other method provided such method complies with the prescribed guidelines and such approval is obtained from the cabinet in writing prior to the transfer of funds. Establishes guidelines for providing necessary information by persons which are required by KRS 131.155(2) to remit funds by electronic fund transfer on behalf of taxpayers they represent in order to properly credit the taxpayer account. Provides that the cabinet may withdraw approval to utilize the credit method or any method employed other than the debit method if the taxpayer or his authorized agent fails to provide required information necessary to effect the transfer and credit funds to the proper taxpayer account. Provides that at the discretion of the cabinet and limited to demonstration of extreme circumstances, a

taxpayer or authorized agent for a taxpayer or taxpayers may make written request to remit funds by electronic means other than the methods previously approved by the cabinet. Revenue Form 10A070 "Authorization Agreement for EFT", January 2001, is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This regulation is specifically required by KRS 131.155(2) and 131.155(3) which authorize the Revenue Cabinet to establish electronic fund transfer requirements and guidelines for the payment of taxes and fees administered by the cabinet by the promulgation of an administrative regulation. The proposed amendment will establish requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment will establish requirements relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes guidelines for the electronic transfer of funds to the Revenue Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Qualifying business taxpayers and other qualifying remitters of funds will be subject to the requirements and guidelines relating to the remittance of funds to the Revenue Cabinet via electronic fund transfer as established by the regulation. Approximately 15 payroll companies remitting on behalf of approximately 10,000 business clients would be affected by this regulation. Additionally, approximately 200 taxpayers whose liabilities exceed the established threshold would be subject to the provisions of this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Payroll companies submitting withholding tax on behalf of business clients will be required to remit payments via electronic fund transfer. These companies will be required to file quarterly for all customers not currently remitting on a quarterly basis. Taxpayers meeting the remittance threshold that are not currently remitting via electronic fund transfer will be required to begin remittance via electronic fund transfer. Those remitting withholding tax will see a reduction in the number and frequency of returns filed.

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

(a) Initially: The Revenue Cabinet processes these funds currently and will incur only minor programming costs as the result of this regulation.

(b) On a continuing basis: The Revenue Cabinet will incur some resource costs in the form of more files resulting from additional taxpayers participating. This will be in the form of additional man hours to process and compliance the returns. This should not be a significant amount.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Taxpayers and payroll companies choosing to remit via the "credit method" are subject to bank charges for initiating the fund transfer.

(9) TIERING: Is tiering applied? Tiering was not used due to the specific nature of the electronic fund transfer process which itself limits the number of affected parties and treats all parties equally.

#### 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? The provisions of the administrative regulation could impact local government to the extent that any local governments utilize payroll companies for the remittance of withholding tax to the Revenue

Cabinet.

2. State what unit, part or division of local government this administrative regulation will affect: To the extent that any local governments utilize payroll companies for the remittance of withholding tax to the Revenue Cabinet, their payroll departments could be involved in the submission of information to the payroll company.

3. State the aspect or service of local government to which this administrative regulation relates: To the extent that any local governments utilize payroll companies for the remittance of withholding tax to the Revenue Cabinet, their payroll departments could be involved in the submission of information to the payroll company.

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. As the requirements of this administrative regulation would be on the actual remitter of funds, which in this case would be the payroll company, this administrative regulation should not affect revenues of local government.

Expenditures (0)

Revenues (0)

#### KENTUCKY BOARD OF NURSING (Amendment)

##### 201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 create the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026 requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. KRS 314.025 also allows the Nursing Incentive Scholarship Fund to issue grants for nursing workforce competency development. This administrative regulation provides criteria for submitting grant requests.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters or its equivalent; and for a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Committee" means the Kentucky Nursing Incentive Scholarship Fund Committee.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(11).

(5) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

(6) "Successful academic progression" means:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year.

Section 3. The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) A member of the committee shall:

(a) Serve without compensation; and

(b) Be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee shall consider the following criteria in evaluating an applicant and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty-five (25) points;

(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and

(c) Financially needy Kentucky residents, forty (40) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows: high school, vocational school, college or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.

Section 5. Amount of Award. (1) The committee shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The committee shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 7 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the committee shall make an award to other eligible applicants.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program;

(b) Has continued maintenance of a preference category; and

(c) Submits to the board a completed "Nursing Incentive Scholarship Fund Request for Continuation" form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for a continued award while enrolled in that program.

Section 8. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract".

(2) The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient

fails to complete the:

(a) Nursing program in which he is enrolled within the time specified by the program of nursing; or

(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferment shall apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferment" form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 11. Grant Requests. (1) No more than forty (40) percent of available revenues received from fines levied by the Cabinet for Health Services shall be expended for grants in any given year.

(2) The deadline for grant requests shall be May 1 and November 1 annually. The requests shall be considered for possible funding in July and January.

(3) The grant request shall include the following:

(a) A problem statement or purpose related to improving nursing workforce competency;

(b) The proposed workforce development activity;

(c) The proposed timelines and outcomes;

(d) The outcome measurement criteria to be used;

(e) The amount requested with a supporting budget;

(f) Any matching or in kind budget contributions to be received; and

(g) The preferred funding cycle of either all funds given initially or partial funds given initially and the remainder at six (6) months.

(4) The following are the reporting requirements for grants that are funded:

(a) An initial report shall be submitted to the board six (6) months following funding or at the midpoint of the grant timeline if that is sooner than six (6) months from the funding date.

(b) Interim reports shall be submitted at six (6) month intervals or as required by the board for the duration of the project funded.

(c) A final report shall be submitted to the board within three (3) months of completion of the project. The final report shall document outcome achievements and their relationship to the funds spent.

Section 12. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application (10/96)";

(b) "Nursing Incentive Scholarship Fund Request for Continuance (10/96)";

- (c) "Nursing Incentive Scholarship Fund Request for Deferral (10/90)";
  - (d) "Nursing Incentive Scholarship Fund Contract (10/90)"; and
  - (e) "Nursing Incentive Scholarship Fund Promissory Note (10/90)".
- (2) This material may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 9:30 a.m. to 4:30 p.m.

TFNA PAYNE, President

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: February 13, 2001 at 8 a.m.

**PUBLIC HEARING:** A public hearing on this regulation shall be held on March 23, 2001, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2001, 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 contract person.

**CONTACT PERSON:** Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Tel: (502) 329-7009, Fax: (502) 696-3938, Email: nathan.goldman@mail.state.ky.us

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulations does: Implements the Nursing Incentive Scholarship Fund Program.

(b) The necessity of this administrative regulation: KRS 314.025-027

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 314.026(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows the awarding of scholarships.

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

(a) How the amendment will change this existing administrative regulation: It will add a new section which sets out the standards and procedures in requesting and awarding nursing workforce competency development grants.

(b) The necessity of the amendment to this administrative regulation: Amendment to KRS 314.025(2)

(c) How the amendment conforms to the content of the authorizing statute: it implements the change to statutes.

(d) How the amendment will assist in the effective administration of the statutes: Allow the awarding of grants in a uniform manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Unknown

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: They will be able to request grants.

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

(a) Initially: Minimal additional costs to person and review requests amount unknown.

(b) On a continuing basis: Unknown

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Licensure renewal fee add-on.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment: No increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not used since to do so would be unconstitutional.

#### KENTUCKY BOARD OF CERTIFICATION FOR ALCOHOL AND DRUG COUNSELORS (Amendment)

#### 201 KAR 35:020. Fees.

RELATES TO: KRS 309.084, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12)

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written and oral examinations which applicants for certification are required to successfully complete. KRS 309.0813(12) requires the board to promulgate an administrative regulation establishing an initial certification fee and renewal fee. This administrative regulation establishes those fees.

**Section 1. Application Fee.** (1) The application fee for board review of the application for certification shall be fifty (50) [twenty-five (25)] dollars.

(2) The application fee shall be nonrefundable.

**Section 2. Examination Fees.** The following fees shall be paid in connection with the examinations required by the board:

(1) The fee for the written examination shall be \$100.

(2) The fee for the oral examination shall be \$125 [fifty-(50)] dollars.

(3) The fee for retaking either portion of the examination shall be the same fee established in subsections (1) and (2) of this section.

**Section 3. Initial Certification Fee.** (1) The initial certification fee shall be \$180 for an applicant for certification.

(2) If the applicant successfully completes all requirements for certification, this fee shall cover certification for the initial three (3) year period.

**Section 4. Renewal Fee.** The renewal fee for certification shall be \$200 for a three (3) year period.

MIKE VANCE, Chair

APPROVED BY AGENCY: February 6, 2001

FILED WITH LRC: February 14, 2001 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on March 22, 2001, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of

(a) What this administrative regulation does: This establishes the fees related to application, examination, initial certification, and re-

renewal of the certification.

(b) The necessity of this administrative regulation: The necessity of this regulation is to allow the board to process applications and examinations for certification, to issue the initial certification, and to renew the certifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish fees for its licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the board to fund the administration of the examination and the board's activities.

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

(a) How the amendment will change this existing administrative regulation: It will increase fees for applying for and taking the examination.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to cover the costs of administering the examination required for certification.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes provide that the board shall establish fees by regulation.

(d) How the amendment will assist in the effective administration of the statutes: The regulation is necessary to cover the costs of effectively administering the examination for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately persons have historically applied to take the examination to be certified as alcohol and drug counselors in the course of a year.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The regulation will identify the fee required to apply for and to take the examination for certification.

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

(a) Initially: No additional costs will relate to the initial implementation.

(b) On a continuing basis: No additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by certificate holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This is a fee regulation. It sets forth the fees that are used by the board to fund the administration of rest of the certification program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation directly establishes fees for application, examination, initial certification, and renewal of the certification.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation does not tier as there is only one class of certificate holders.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(Amendment)**

**401 KAR 51:001. Definitions ~~for~~ [and abbreviations of terms used in] 401 KAR Chapter 51.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Part [Appendices A through K to] 50, Appendices A to K, 51.100(s), 51.121 as amended at 65 FR 11222 (March 2, 2000), 53, 60, Appendices A and B, [to 60, Appendix B to] 61, Appendix B, 75, 96, 42 USC 7410 to 7671q [-7411(a)(8)]

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used [provides for the defining of terms used] in 401 KAR Chapter 51. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. [~~As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:~~] (1) "Acid rain emissions limitation" means a limitation on emissions of SO<sub>2</sub> or NO<sub>x</sub> imposed by the Acid Rain Program under 42 USC 7651 to 7651o.

(2) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(3) [(2)] "Air contaminant" is defined [has the meaning given it] in KRS 224.01-010(1).

(4) [(3)] "Air pollutant" means [an] air contaminant.

(5) [(4)] "Air pollution" is defined [has the meaning given it] in KRS 224.01-010(3).

(6) [(5)] "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(7) "Allocate" or "allocation" means the determination by the cabinet of the number of NO<sub>x</sub> allowances to be credited to a NO<sub>x</sub> budget unit.

(8) "Allocation period" means each three (3) year period beginning May 1, 2004.

(9) [(6)] "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit [of] a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(10) [(7)] "Alternative method" means a method of sampling and analyzing for an air pollutant that [which] is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to [in specific cases] produce adequate results [adequate] for its determination of compliance.

(11) [(8)] "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(12) [(9)] "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

[(10)] "Cabinet" has the meaning given it in KRS 224.01-010.

(13) "ANSI" means American National Standards Institute. [(14)] "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable Annual asset guideline repair allowance percentage specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.]

(14) "AOAC" means Association of Official Analytical Chemists.

(15) "ASTM" means American Society for Testing and Materials.

(16) "BOD" means biochemical oxidant demand.

(17) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating

water, steam, or other medium.

(18) "BTU" means British thermal unit.

(19) "°C" means degree Celsius (centigrade).

(20) "Cabinet" is defined in KRS 224.01-010.

(21) "Cal" means calorie.

(22) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility that:

(a) Exceeds the product of:

1. The applicable "annual asset guidelines repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534; and

2. The affected facility's basis, as defined by 26 USC 1012; and

(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(23) "cfm" means cubic feet per minute.

(24) "CH<sub>4</sub>" means methane.

(25) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(26) "CO" means carbon monoxide.

(27) "CO<sub>2</sub>" means carbon dioxide.

(28) "COD" means chemical oxidant demand.

(29) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(30) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(31) [(12)] "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(32) "Commence operation" means, for a NO<sub>x</sub> budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 CFR 96.5:

(a) For a unit that is a NO<sub>x</sub> budget unit under 40 CFR 96.4 on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NO<sub>x</sub> budget unit under 40 CFR 96.4 on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under 40 CFR 96.4 is the unit's date of commencement of operation.

(33) [(13)] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(34) "Compliance supplement pool" means the quantity of NO<sub>x</sub> allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NO<sub>x</sub> budget units that achieve early reduction; or

(b) Used to assist NO<sub>x</sub> budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(35) [(14)] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(36) "Continuous emission monitoring system for NO<sub>x</sub>" or "CEMS for NO<sub>x</sub>" means the equipment required by 40 CFR 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NO<sub>x</sub> emissions, expressed in tons per hour for NO<sub>x</sub>. The following systems are necessary component parts, as required by 40 CFR Part 75, included in a continuous emission monitoring system:

(a) Flow monitor;

(b) NO<sub>x</sub> pollutant concentration monitor;

(c) Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>) if required by 40 CFR 96.70 to 96.76;

(d) Continuous moisture monitor if required by 40 CFR 96.70 to 96.76; and

(e) Automated data acquisition and handling system.

(37) [(15)] "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations

used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(38) "Control period" means the period beginning:

(a) May 31, 2004, and ending September 30, 2004; and thereafter.

(b) May 1 of a year and ending September 30 of the same year, inclusive.

(39) [(16)] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(40) [(17)] "District" is defined [has-the-meaning-given-it] in KRS 224.01-010.

(41) "dscf" means dry cubic feet at standard conditions.

(42) "dscm" means dry cubic meter at standard conditions.

(43) "Electric generating unit" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(44) [(18)] "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(45) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(46) [(19)] "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(47) "Excess NO<sub>x</sub> emissions" means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> budget unit during a control period that exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

(48) [(20)] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(49) [(21)] "Existing source" means a source which is not a new source.

(50) [(22)] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(51) "°F" means degree Fahrenheit.

(52) [(23)] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(53) "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(54) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(55) "ft" means feet or foot.

(56) [(24)] "Fuel" means natural gas, petroleum, coal, wood, or a [and-any] form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(57) [(25)] "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(58) "g" means gram.



(59) "gal" means gallon.  
 (60) "Generator" means a device that produces electricity.  
 (61) "gr" means grain.  
 (62) "HCl" means hydrochloric acid.  
 (63) "Heat input" means the product (in MMBTU per unit of time) of the gross calorific value of the fuel (in BTU per lb) and the fuel feed rate into a combustion device (in mass of fuel per unit of time) that:  
 (a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and  
 (b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 CFR 96.70 to 96.76.  
 (64) "Hg" means mercury.  
 (65) "HF" means hydrogen fluoride.  
 (66) "hr" means hour.  
 (67) [(26)] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.  
 (68) "H<sub>2</sub>O" means water.  
 (69) "H<sub>2</sub>S" means hydrogen sulfide.  
 (70) "H<sub>2</sub>SO<sub>4</sub>" means sulfuric acid.  
 (71) "in" means inch.  
 (72) [(27)] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.  
 (73) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.  
 (74) [(28)] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.  
 (75) "J" means joule.  
 (76) "Kg" means kilogram.  
 (77) "l" means liter.  
 (78) "lb" means pound.  
 (79) "Long dry kiln" means a kiln that:  
 (a) Is fourteen (14) feet or larger in diameter;  
 (b) Is 400 feet or greater in length;  
 (c) Employs no preheating of the feed; and  
 (d) Has a dry inlet feed.  
 (80) "Long wet kiln" means a kiln that:  
 (a) Is fourteen (14) feet or larger in diameter;  
 (b) Is 400 feet or greater in length;  
 (c) Employs no preheating of the feed; and  
 (d) The inlet feed to the kiln is a slurry.  
 (81) "Low NOx burners" means combustion equipment designed to reduce flame turbulence, delay fuel to air mixing, and establish fuel rich zones for initial combustion.  
 (82) "m" means meter.  
 (83) "m<sup>3</sup>" means cubic meter.  
 (84) [(29)] "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.  
 (85) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.  
 (86) [(30)] "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.  
 (31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.  
 (87) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.  
 (88) "Maximum potential hourly heat input" means an hourly heat

input used for reporting purposes when a unit lacks certified monitors to report heat input and is:  
 (a) A value calculated according to 40 CFR Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 CFR Part 75, Appendix D to report heat input; or  
 (b) A value reported according to 40 CFR Part 75 using the maximum potential flow rate and either the maximum percent CO<sub>2</sub> concentration (in percent CO<sub>2</sub>) or the minimum percent O<sub>2</sub>, if the unit intends to use a flow monitor and a diluent gas monitor.  
 (89) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 CFR 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 CFR 75, Appendix A, Section 2, and the maximum percent O<sub>2</sub> or the minimum percent CO<sub>2</sub> under all operating conditions of the unit except for unit startup, shutdown, and malfunction.  
 (90) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.  
 (91) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:  
 (a) Burning part of the fuel at a lower temperature; and  
 (b) Reducing conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.  
 (92) "min" means minute.  
 (93) "mg" means milligram.  
 (94) "μg" means microgram.  
 (95) "MJ" means megajoules.  
 (96) "MM" means million.  
 (97) "mm" means millimeter.  
 (98) "mo" means month.  
 (99) [(32)] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.  
 (100) [(33)] "Modification" means a physical change in, or a change in the method of operation of, an affected facility which:  
 (a) Increases the amount of a regulated [an] air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of a regulated [an] air pollutant [(to which a standard applies)] into the atmosphere not previously emitted; and  
 (b) Is not solely:  
 1. [The following shall not, by themselves, be considered modifications:  
 (a) Maintenance, repair, or [and] replacement that [which] the cabinet determines to be routine for a source category;  
 2. [(b)] An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;  
 3. [(c)] An increase in the hours of operation;  
 4. [(d)] Use of an alternative fuel or raw material if, prior to the date a [any] standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change[. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8); shall not be considered a modification];  
 5. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8);  
 6. [(e)] The addition or use of a [any] system or device whose primary function is the reduction of air pollutants, unless [except when] an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial; or  
 7. [(f)] The relocation or change in ownership of a source [an existing facility].  
 (101) [(34)] "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.  
 (102) "Monitoring system" means a monitoring system that meets the requirements of 40 CFR Part 96.



(103) "MWe" means megawatt electrical.

(104) "N<sub>2</sub>" means nitrogen.

(105) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(106) [(35)] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation[—A source, upon reconstruction, becomes a new source], irrespective of a change in emission rate.

(107) [(36)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(108) "ng" means nanograms.

(109) "NO" means nitric oxide.

(110) "NO<sub>2</sub>" means nitrogen dioxide.

(111) "NOx" means nitrogen oxides.

(112) "NOx allowance" means an authorization by the cabinet for a source subject to 401 KAR 51:160, 401 KAR 51:170, 401 KAR 51:180, 401 KAR 51:190, or 401 KAR 51:195 to emit one (1) ton of NOx during a control period.

(113) "NOx authorized account representative" means the natural person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 CFR 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 CFR 96, Subpart F, for a general account.

(114) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 CFR 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 CFR 96.54(d);

(c) Withdrawal from the NOx budget program under 40 CFR 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 CFR 96.87.

(115) "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(116) "NOx budget source" means a source that includes one (1) or more NOx budget units.

(117) "NOx Budget Trading Program" means a multistate NOx air pollution control and emission reduction program established for Kentucky in 401 KAR 51:190, as a means of mitigating the interstate transport of O<sub>3</sub>, O<sub>3</sub> precursors, and NOx.

(118) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 CFR 96.80.

(119) "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(120) "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless provided

for in a leasehold agreement, a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(121) "O<sub>2</sub>" means oxygen.

(122) "O<sub>3</sub>" means ozone.

(123) [(37)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(124) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(125) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(126) [(38)] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(127) "oz" means ounce.

(128) "Parametric monitoring" means an alternative to continuous emissions monitoring system (CEMS) procedure based on correlating the results of emission testing with operating parameters.

(129) [(39)] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(130) [(40)] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(131) "Peak load" means the maximum instantaneous operating load.

(132) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(133) [(41)] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(134) [(42)] "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on [Appendix J to] 40 CFR 50, Appendix J [which has been incorporated by reference in 401 KAR 50:045;] and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(135) [(43)] "PM<sub>10</sub> emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(136) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(137) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(138) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design, where:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term for

other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(139) "ppb" means parts per billion.

(140) "ppm" means parts per million.

(141) "ppm(w/w)" means parts per million (weight by weight).

(142) "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(143) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(144) "psia" means pounds per square inch absolute.

(145) "psig" means pounds per square inch gage.

(146) [(44)] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65, [the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.]

(147) [(46)] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by [Appendices A through K to] 40 CFR 50, Appendices A to N; [Appendices A and B to] 40 CFR 60, Appendices A and B; and [Appendix B to] 40 CFR 61, Appendix B, [which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.]

(148) "Run" means the net period of time, either intermittent or continuous, within the limits of good engineering practice during which an emission sample is collected.

(149) "S" means at standard conditions.

(150) "sec" means second.

(151) "Secondary emissions" means emissions that:

1. Occur as a result of the construction or operation of a major stationary source or major modification; and

2. Do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification which caused the secondary emissions;

(c) Include emissions from an offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Does not include emissions which come directly from a mobile

source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(152) [(47)] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to, emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(153) [(50)] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(154) [(51)] "Shutdown" means the cessation of an operation.

(155) "SO<sub>2</sub>" means sulfur dioxide.

(156) [(52)] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is [- The property shall be considered contiguous if] separated only by a public thoroughfare, stream, or other right of way.

(157) "sq" means square.

(158) [(53)] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(159) [(54)] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65, including [under the administrative regulations of the Division for Air Quality or] the emission control requirements necessary to comply with 401 KAR Chapter 51[- of the administrative regulations of the Division for Air Quality].

(160) [(55)] "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(161) [(56)] "Start-up" means the setting in operation of an affected facility.

(162) [(57)] "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(163) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(164) [(58)] "Total suspended particulate" means particulate matter as measured by the method described in [Appendix B of] 40 CFR 50, Appendix B, [which has been incorporated by reference in 401 KAR 50:015.]

(165) "Ton" or "tonnage" means, for a NO<sub>x</sub> budget source, a short ton (2,000 pounds). For determining compliance with the NO<sub>x</sub> budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(166) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 CFR 50, Appendix B.

(167) "tpy" means tons per year.

(168) "TSS" means total suspended solids.

(169) [(59)] "Uncombined water" means water which can be sepa-

rated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(170) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(171) [(60)] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(172) [(64)] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

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

(174) "UTM" means Universal Transverse Mercator.

(175) [(62)] "Volatile organic compound" or "VOC" means an organic compound that [which] participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,1,2,2-tetrafluoroethane [dichlorotetrafluoroethane] (CFC-114); chloropentafluoroethane (CFC-115); 2,2-dichloroethane [dichlorotrifluoroethane] (HFC C-123); 1,1,1,2-tetrafluoroethane [tetrafluoroethane] (HFC134a); 1,1-dichloro 1-fluoroethane [dichlorofluoroethane] (HCFC-141b); 1-chloro 1,1-difluoroethane [chlorodifluoroethane] (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $C_4F_9OCH_3$ ); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCF_2OCH_3$ ); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $C_4F_9OC_2H_5$ ); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCF_2OC_2H_5$ ); methyl acetate; and perfluorocarbon compounds which fall into the following [these] classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; [and]

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine; or

(e) Other compounds that have negligible photochemical reactivity and which are inadvertently measured by test methods that have been approved by the cabinet and the U.S. EPA. [These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.]

(176) "yd" means yard.

[Section 2-Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC—Association of Official Analytical Chemists

ANSI—American National Standards Institute

ASTM—American Society for Testing and Materials

BOD—Biochemical oxidant demand

BTU—British Thermal Unit

°C—Degree Celsius (centigrade)

Cal—calorie

cfm—cubic feet per minute

CFR—Code of Federal Regulations

CH<sub>4</sub>—methane

CO—Carbon monoxide

CO<sub>2</sub>—Carbon dioxide

COD—Chemical oxidant demand

dscf—dry cubic feet at standard conditions

dscm—dry cubic meter at standard conditions

°F—Degree Fahrenheit

ft—feet

g—gram

gal—gallon

gr—grain

hr—hour

HCl—Hydrochloric acid

Hg—mercury

HF—Hydrogen fluoride

H<sub>2</sub>O—water

H<sub>2</sub>S—Hydrogen sulfide

H<sub>2</sub>SO<sub>4</sub>—Sulfuric acid

in—inch

J—joule

KAR—Kentucky Administrative Regulations

kg—kilogram

KRS—Kentucky Revised Statutes

L—liter

lb—pound

m—meter

m<sup>3</sup>—cubic meter

min—minute

mg—milligram

MJ—megajoules

MM—million

mm—millimeter

mo—month

Ng—nanograms

N<sub>2</sub>—Nitrogen

NO—Nitric oxide

NO<sub>2</sub>—Nitrogen dioxide

NO<sub>x</sub>—Nitrogen oxides

oz—ounce

O<sub>2</sub>—oxygen

O<sub>3</sub>—ozone

pbt—parts per billion

ppm—parts per million

ppm (w/w)—parts per million (weight by weight)

ug—microgram

psia—pounds per square inch absolute

psig—pounds per square inch gage

S—at standard conditions

sec—second

SIP—State implementation plan

SO<sub>2</sub>—Sulfur dioxide

sq—square

TAPPI—Technical Association of the Pulp and Paper Industry

tpy—tons per year

TSP—Total suspended particulates

TSS—Total suspended solids

U.S. EPA—United States Environmental Protection Agency

UTM—Universal Transverse Mercator

VOC—Volatile organic compound

yd—yard]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel

Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: The administrative regulation defines the terms used in Kentucky administrative regulations contained in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the definitions of terms used in the Kentucky administrative regulations implementing the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call), which is found in pertinent part at 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 40 CFR 51.122, and 40 CFR Part 96. The amendment also proposes revisions suggested by the Legislative Research Commission to make the administrative regulation conform to KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the administrative regulation to conform to KRS Chapter 13A and to add the definitions of terms used in the Kentucky administrative regulations implementing the federal NOx SIP Call.

(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How the amendment will assist in the effective administration of statutes: The amendment to the administrative regulation will provide the definitions of terms used in the Kentucky administrative regulations implementing the federal NOx SIP Call and bring the administrative regulation into conformance with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. No entities are directly affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No entities are directly affected by this administrative regulation.

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

(a) Initially: There are no new initial costs for the implementation of this administrative regulation.

(b) On a continuing basis: There are no known continuing costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because there are no known costs related to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The proposed administrative regulation imposes no requirements. Therefore, tiering is not applicable.

#### 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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amendment)

##### 405 KAR 18:210. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 784.20(a)(3), 817.121-.122, 917, 30 USC 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.121-.122, 917, 30 USC 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (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 requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures. This administrative regulation differs from 30 CFR 817.121 -.122. [The provisions in Section 1(4)(b) of this administrative regulation regarding identification of the owner or his representative if present during the presubsidence survey, the owner's ability to submit a written description of any areas of disagreement with the survey, and the cabinet's ability to require additional measures to assure accurate information is included in the survey, are not included in the corresponding federal regulations. The cabinet believes these provisions, which are similar to those used for preblasting surveys for many years, are reasonable and necessary to

the effective conduct and use of presubsidence surveys and are not burdensome to permittees. Section 1(4)(c) of this administrative regulation establishes a temporary buffer zone of 1500 feet horizontal distance around structures for which a presubsidence survey is required, until the permittee has submitted either the presubsidence survey or documentation that the owner has denied access to conduct the survey, the structure owner has had an opportunity to comment on the survey, and the cabinet has made a determination on any dispute that has arisen about the adequacy of the survey. Section 1(4)(d) of this administrative regulation provides an option to Section 1(4)(c) of this administrative regulation, whereby the applicant would demonstrate buffer distances based upon the angle of draw and site specific conditions. These provisions are not included in the corresponding federal regulations, which require that all necessary presubsidence surveys, or documentation of denial of access, be submitted prior to issuance of the permit. Because this administrative regulation allows the surveys to be submitted after permit issuance, these requirements are necessary to insure that a survey for a particular structure will be conducted before mining approaches close enough to have a potential subsidence impact on the structure, and that there is time for consideration of the survey after it is submitted.] Section 3(2) of this administrative regulation, regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992, whereas the federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) of this administrative regulation is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law. Section 3(5)(c) of this administrative regulation allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the cabinet believes the prompt release or return is not inconsistent with the federal regulations. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:010, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request.

Section 1. General Requirements. (1)(a) The permittee shall adopt:

1. Measures consistent with known technology that:
  - a. Prevent subsidence from causing material damage to the extent technologically and economically feasible;
  - b. Maximize mine stability; and
  - c. Maintain the value and reasonably foreseeable use of surface land; or
2. Mining technology that provides for planned subsidence in a predictable and controlled manner.
- (b) Nothing in 405 KAR Chapters 7 through 24 shall be construed to prohibit the standard method of room and pillar mining.
- (2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the per-

mittee shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to these structures are not required if:

- (a) The permittee has the written consent of their owners; or
- (b) Unless the anticipated damage would constitute a threat to health or safety, the costs of the measures exceed the anticipated costs of repair.
- (3) The permittee shall comply with all provisions of the approved subsidence control plan prepared pursuant to 405 KAR 8:040, Section 26.

(4) Presubsidence surveys of structures:

(a) The permittee shall conduct and submit to the cabinet a survey of the condition of each noncommercial building or occupied residential dwelling and structures related thereto that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw. If the permittee cannot make this survey because the owner will not allow access to the site, the permittee shall notify the owner, in writing, of the effect that denial of access will have under Section 3(4)(c) of this administrative regulation. The permittee shall pay for its technical assessment or engineering evaluation used to determine the premining condition or value of a structure. The permittee shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet:

(b) If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this subsection, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, within thirty (30) days after receiving a copy of the survey, a detailed description of the specific areas of disagreement. If the cabinet receives written disagreement from the owner, the cabinet shall promptly notify the permittee. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with this administrative regulation:

(c) Underground operations shall not be conducted within 1,500 feet horizontally of a structure for which a survey is required under this subsection unless the permittee has submitted to the cabinet the required survey or documentation that he cannot perform the survey because the owner will not allow access to the site, and the time period for written disagreement by the owner has expired without a written disagreement being received by the cabinet. If a dispute arises over the adequacy of the survey the cabinet shall establish, based upon site specific conditions, a horizontal distance of 1,500 feet or less which the cabinet deems adequate to ensure the structure will not be damaged by subsidence, and underground operations shall not be conducted within that distance until the cabinet has made a determination on the dispute. The cabinet shall make a determination within thirty (30) days after receiving the written disagreement.

(d) If requested in writing by the permittee and approved in writing by the cabinet, the permittee shall comply with the requirements of this paragraph instead of the requirements of paragraph (c) of this subsection. The numerical magnitude of the angle of draw shall not be established under this paragraph.

2. The permittee's request for approval under this paragraph shall include a map or maps that show the horizontal separation between the underground workings and each structure that is necessary to ensure that the structure is outside the surface area encompassed by the angle of draw. The request shall also include drawings, calculations, and other relevant supporting information to demonstrate, to the satisfaction of the cabinet, the validity of the map information submitted by the permittee.

3. Underground operations shall not be conducted closer to a structure than the horizontal distance established under this paragraph based upon the angle of draw unless the permittee has submitted to the cabinet the required presubsidence survey or documentation that he cannot perform the survey because the owner will not allow access to the site, and the time period for written disagreement by the owner



has expired without a written disagreement being received by the cabinet. If a dispute arises over the adequacy of the survey, underground operations shall not be conducted within the horizontal distance established under this paragraph until the cabinet has made a determination on the dispute. The cabinet shall make a determination within thirty (30) days after receiving the written disagreement.

(e) This subsection shall apply:

1. To extraction of coal under a permit, permit amendment, and permit revision issued after June 10, 1998; and
2. 180 days after June 10, 1998, to extraction of coal under a permit, permit amendment, and permit revision issued prior to June 10, 1998.]

Section 2. Public Notice. (1) The permittee shall mail a notification to all owners and occupants of surface property and structures within the area above the underground workings. Each owner or occupant shall be notified by mail at least ninety (90) days prior to mining beneath his property or structure.

(2) If the notice has been properly given, and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath the property or structure sooner than ninety (90) days after the notice, the permittee shall immediately provide additional written notice to the owner or occupant that the mining will be conducted, but in no case shall mining be conducted beneath the property or structure sooner than thirty (30) days after the additional notice is given. [sooner than ninety (90) days, if approved by the cabinet. The permittee shall submit a written request to the cabinet for approval, including a description of the emergency or other unforeseen conditions that necessitate mining sooner than ninety (90) days after the initial notice. If the cabinet determines that conditions necessitate mining sooner than ninety (90) days after the initial notice, and if the presubsidence condition survey of structures required under Section 1(4) of this administrative regulation, or documentation of denial of access to conduct the survey, has been submitted to the cabinet and the cabinet has made a determination on a dispute, if any, that has arisen over the adequacy of the survey under Section 1(4) of this administrative regulation, the cabinet may approve the request. The cabinet shall promptly notify the permittee in writing of its determination on the request. However, in no case shall mining be conducted beneath the property or structure sooner than ten (10) days after the additional notice is given, unless the ten (10) day notice period is expressly waived by the owner in writing.]

(3) The notification shall include, at a minimum:

- (a) Identification of specific areas in which mining will take place;
- (b) Dates that specific areas are anticipated to be undermined; and
- (c) The location or locations where the permittee's subsidence control plan may be examined.

Section 3. Repair of Damage. (1) Repair of damage to surface lands. The permittee shall correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining. The permittee shall promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair is selected, the permittee shall fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee shall compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence related damage. The permittee may provide compensation by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(3) Repair or compensation for damage to other structures. The permittee shall, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subsection (2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value re-

sulting from the subsidence. Repair of damage shall include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(4) [Rebuttable presumption of causation by subsidence:

(a) Rebuttable presumption of causation for damage within angle of draw. If damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption shall exist that the permittee caused the damage. The presumption shall normally apply to an angle of draw of thirty (30) degrees.

(b) Approval of site specific angle of draw. A permittee or applicant may request that the presumption apply to an angle of draw different from that established in paragraph (a) of this subsection. The cabinet may approve application of the presumption to a site specific angle of draw based upon a site specific analysis submitted by the applicant. To establish a site specific angle of draw, the applicant shall demonstrate and the cabinet shall determine in writing that the proposed angle of draw has a more reasonable basis than the angle of draw established in paragraph (a) of this subsection, based upon a site specific geotechnical analysis of the potential surface impacts of the mining operation.

(c) No presumption where access for presubsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the presubsidence survey in accordance with Section 1(4) of this administrative regulation, a rebuttable presumption under this subsection shall not exist.

(d) Rebuttal of presumption. The presumption may be rebutted if the evidence establishes that the damage:

1. Predated the mining;
2. Was proximately caused by another factor and not the subsidence; or
3. Occurred outside the surface area within which subsidence was actually caused by the mining in question.

(e) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information shall be considered by the cabinet.

(5) Adjustment of bond amount for subsidence damage.

(a) If subsidence related material damage to land, structures or facilities protected under subsections (1) through (3) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, until the repair or compensation is completed. If repair or compensation is completed within ninety (90) days of the occurrence of damage, 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 subsidence is not complete, or that not all probable subsidence related material damage has occurred to lands or protected structures, and that therefore it would be unreasonable to complete within ninety (90) days the repair of the subsidence related material damage to lands or protected structures.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4, covers the subsidence damage, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the subsidence damage. 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 repair or compensation.

Section 4. Buffer Zones. (1) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage

capacity of twenty (20) acre-feet or more or bodies of water with a volume of twenty (20) acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, the features or facilities. If the cabinet determines that it is necessary in order to minimize the potential for material damage to the features or facilities previously described in this subsection or to any aquifer or body of water, that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent to the feature, facility, aquifer, or body of water.

(2) If subsidence causes material damage to any of the features or facilities covered by subsection (1) of this section, the cabinet may suspend mining under or adjacent to the features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to the features or facilities.

(3) The cabinet shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

Section 5. Annual Plan of Underground Workings. (1) Within forty-five (45) days after the first day of January following each year in which underground mining activities are conducted, and at any other time upon written request by the cabinet, the permittee shall submit two (2) copies of a detailed plan of the existing and proposed underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, the boundaries of the permit area, and other information required by the cabinet.

(2) Copies of the maps required to be filed with the Kentucky Department of Mines and Minerals under KRS 352.450 and 352.480 may be submitted to the cabinet to fulfill the requirements of this section, if the maps include all the information required under subsection (1) of this section.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 25, 2001 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 29, 2001, at 10 a.m. (Eastern time) in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement, at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 22, 2001, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on March 29, 2001, if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Telephone: (502) 564-6940; FAX: (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures.

(b) The necessity of this administrative regulation: KRS 350.465(2) directs the cabinet to promulgate a comprehensive permanent regulatory program to implement PL 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), for the purpose of accepting and administering primary enforcement responsibilities pursuant to that Act. The U.S. Office of Surface Mining Reclamation and Enforcement (OSM) has approved Kentucky's statutes and administrative regulations as meeting the requirements of SMCRA and the federal regulations pursuant thereto. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility (state primacy) under SMCRA. This administrative regulation is necessary to implement the requirements of the corresponding federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations that are consistent with and not more stringent than required by federal law and regulations. This administrative regulation establishes requirements for subsidence control that are consistent with federal requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements and procedures for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will delete the requirement for presubsidence surveys of structures in 405 KAR 18:210 Section 1(4); will amend Section 2(2) regarding the timing of notice to surface owners before mining beneath their property; and will delete the rebuttable presumption of causation of subsidence damage in Section 3(4).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the corresponding federal regulations have been changed. Presubsidence surveys of structures, and the rebuttable presumption of causation of subsidence damage, are being deleted because these requirements were suspended from the federal rules (64 FR 71652, December 22, 1999) following the April 27, 1999 decision of the U.S. Court of Appeals for the District of Columbia Circuit. *National Mining Association v. Babbitt*, 172 F.3d 906 (D.C. Cir. 1999). The minimum period of notice to property owners prior to undermining, in the event of emergencies or other unforeseen conditions in the underground mining, will be increased from 10 days (or less if waived by the property owner) to its previous length of 30 days, because the current 10 day notice period is premised upon completion of presubsidence surveys of structures, which will no longer be required.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 authorizes the adoption of state administrative regulations that are consistent with the corresponding federal law and regulations, including environmental protection performance standards that are not more stringent than the federal requirements. This amendment deletes requirements that have been suspended from the corresponding federal regulations, and thereby maintains consistency with the corresponding federal regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment deletes requirements and thereby simplifies and streamlines the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects permittees of underground coal mining operations. On November 30, 2000 there were 897 underground mining permits, of which 270 were active, 293 were still undisturbed or in temporary cessation, and 334 were in the bond release process. Presently, 72 original applications are pending. This amendment will also affect owners of lands or structures potentially affected by subsidence.

(4) Provide an assessment of how the above group or groups will



be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Underground mining permittees will be relieved of the obligation to conduct presubsidence surveys of structures, and will be relieved of the rebuttable presumption that the permittee caused any subsidence damage that occurs. Both structure owners and permittees will be potentially affected by the absence of presubsidence surveys, because there will be no record of existing structure conditions against which actual or perceived subsidence damage can later be measured. Permittees will be required to provide additional notice to surface owners earlier (30 versus 10 days prior to undermining) when emergency conditions cause the permittee to undermine the property sooner than expected. Under normal conditions, permittees must notify surface owners at least 90 days prior to undermining their property.

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

(a) Initially: This amendment will not necessitate any additional costs for implementation.

(b) On a continuing basis: This amendment will not necessitate any additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's regulatory program under KRS Chapter 350 for surface and underground coal mining operations, including the permitting, inspection and enforcement activities associated with this administrative regulation, is funded 50% by the state's General Fund and 50% by a grant from the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement. The operating budget of the cabinet's Department for Surface Mining Reclamation and Enforcement will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: Implementation of this amendment will not require any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not used. Under the corresponding federal law and regulations, all permittees must be subject to the same requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 1309a 30 CFR 730-733, 735, 784.20(a)(3), 817.121-.122, 917. The federal regulations corresponding to this administrative regulation are at 30 CFR 784.20(a)(3), 817.121-.122. The U.S. Office of Surface Mining Reclamation and Enforcement (OSM) suspended these regulations in part (64 FR 71652, December 22, 1999) following the April 27, 1999 decision of the U.S. Court of Appeals for the District of Columbia Circuit. *National Mining Association v. Babbitt*, 172 F.3d 906 (D.C. Cir. 1999).

2. State compliance standards. This administrative regulation sets forth requirements to prevent or control the effects of subsidence on surface areas which overlie underground workings. The proposed amendment deletes Section 1(4) which required a presubsidence survey of the structural condition of each noncommercial building or occupied residential dwelling and structures related thereto within the area encompassed by the projected angle of draw. It also deletes Section 3(4)(a)-(d) which established a rebuttable presumption that if damage to a protected structure occurs due to earth movement within an area determined by projecting the angle of draw outward from the permittee's underground workings, the permittee caused the damage. The amendment also revises Section 2, regarding the permittee's notice to surface owners prior to undermining their property. The minimum period of prior notice in emergency conditions is increased from 10 days to 30 days.

After this amendment, the requirements include:

Underground mining measures to prevent or control subsidence;  
Underground mining buffer zones to protect important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments;

Surface measures to minimize subsidence damage to structures when planned subsidence mining methods are used;

Notification of surface owners by mail prior to mining under their property;

Additional performance bond if material subsidence damage occurs;

Repair or compensation for subsidence damage to surface properties;

Restoration of surface lands affected by subsidence; and

Annual submission of maps of completed and proposed underground workings.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are at 30 CFR 784.20(a)(3), 817.121-.122. These regulations were suspended in part (64 FR 71652, December 22, 1999) following the April 27, 1999 decision of the U.S. Court of Appeals for the District of Columbia Circuit. *National Mining Association v. Babbitt*, 173 F.3d 906 (1999). OSM suspended the requirement at 30 CFR 784.20(a)(3) for presubsidence surveys of the specific structural conditions of protected structures within the projected angle of draw. OSM also suspended the requirements in 30 CFR 817.121(c)(4)(i)-(iv) regarding a rebuttable presumption that damage to protected structures resulting from earth movement within the projected angle of draw was caused by the permittee.

After the suspension, the federal regulations require:

Presubsidence surveys to determine the quantity and quality water supplies that may be damaged by subsidence (the corresponding state requirement is in 405 KAR 8:040 Section 26);

Underground mining measures to prevent or control subsidence;

Underground mining buffer zones to protect important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments;

Surface measures to minimize subsidence damage to structures when planned subsidence mining methods are used;

Notification of surface owners by mail prior to mining under their property;

Additional performance bond if material subsidence damage occurs;

Repair or compensation for subsidence damage to surface properties;

Restoration of surface lands affected by subsidence; and

Annual submission of maps of completed and proposed underground workings.

The federal requirements are generally the same as the proposed amendment, except as explained in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Deletion of Section 1(4) regarding presubsidence surveys of structures, and deletion of Section 3(4)(a)-(d) regarding the rebuttable presumption, match the 12/22/99 suspension of federal rules. However, this administrative regulation as amended will continue to differ in other ways from its federal counterparts at 30 CFR 817.121 -.122. Section 2 requires the permittee to mail a notice to surface owners at least 90 days prior to mining beneath their property, but allows undermining within as little as 30 days after an additional notice if necessitated by emergency or other unforeseen conditions. The federal counterpart at 30 CFR 817.122 requires that the notice be mailed at least 6 months prior to undermining, but allows the notice to occur within the 6 months if approved by the regulatory authority. The administrative regulation provides additional flexibility to the permittee and is consistent with the language of the federal regulation, which allows the regulatory authority to approve a time frame shorter than 6 months. This amendment restores the time frames in Section 2 to the values that existed prior to inclusion of the requirements for presubsidence structural surveys in June 1998. The version of Section 2 that existed prior to June 1998 had been approved by OSM. The 10-day notice period for emergency situations in the current administrative regulation was predicated upon the existence of completed presubsidence structural surveys. Since these surveys will no longer be required, the 10-day notice period is no longer appropriate and has been replaced with the previously approved 30-day period. Section 3(2), regarding repair or compensation for subsidence damage to noncommercial buildings and occupied

residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992, whereas the federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law. Section 3(5)(c) allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the prompt release or return is not inconsistent with the purpose of the federal regulations. Section 5(1), regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:010, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications for the differences between the corresponding state and federal requirements are explained in item 4 above as part of the discussion of each difference.

**JUSTICE CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 6:020. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 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 Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, February 13 [January-9], 2001":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.4 The Monitoring and Operation of Private Prisons
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen

- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.3 Holding of Second Jobs by Corrections' Employees
- 3.5 Sexual Harassment
- 3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders
- 3.7 Shifts, Posts and Days Off Assignment
- 3.12 Institutional Staff Housing
- 3.15 Antiharassment Policy (Added 2/13/01)
- 3.18 Employee Insurance Coverage
- 3.20 Communication and Recording Devices
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.6 Operation and Safety of Corrections Firing Ranges
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law
- 6.5 E-mail
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety ~~[(Amended-1/9/01)]~~
- 8.6 Extraordinary Occurrence Report
- 8.7 Notification of Extraordinary Occurrence
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program
- 13.9 Dental Services
- 13.10 Serious Infectious Disease
- 13.11 Employee Tuberculosis Program
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.5 Board of Claims ~~[(Added-1/9/01)]~~
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.5 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing ~~[(Amended-1/9/01)]~~
- 16.1 Inmate Visits ~~[(Amended-1/9/01)]~~
- 16.2 Inmate Correspondence
- 16.3 Inmate Access to Telephones
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property (Amended 2/13/01)
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, February 13 [January-9], 2001":

- 18.1 Classification of the Inmate
- 18.2 Central Office Classification Committee
- 18.5 Custody and Security Guidelines

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18.7	Transfers
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Placement for Residential Mental Health Treatment
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interstate Agreement on Transfers
18.18	International Transfer of Inmates
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program <u>(Amended 1/9/01)</u>
20.1	Educational Programs and Educational Good Time
21.2	Boot Camp Program
22.1	Privilege Trips
23.1	Religious Programs
25.1	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Institutional Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
25.11	Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, February 13 [January-9], 2001":

27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies <u>(Amended 2/13/01)</u>
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Pretrial Diversion <u>(Amended 2/13/01)</u>
27-11-02	Prerelease Probation
27-12-01	Supervision: Case Classification <u>(Amended 2/13/01)</u>
27-12-02	Risk Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Supervision and Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Educational and Vocational Referrals
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Offender Travel
27-13-01	Drug and Alcohol Testing of Offenders
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers <u>(Amended 2/13/01)</u>
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation <u>(Amended 1/9/01)</u>
27-15-01	Supervision Report; Violations and Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence <u>(Amended 2/13/01)</u>
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer or Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification

27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-23-01	In-state Transfer <u>(Amended 1/9/01)</u>
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Offenders to Active Supervision <u>(Amended 1/9/01)</u>
27-26-01	Assistance to Former Clients and Dischargees <u>(Amended 1/9/01)</u>
27-27-01	Restoration of Civil Rights <u>(Amended 2/13/01)</u>
27-28-01	Firearms or <u>[/]</u> Explosives Restoration <u>(Amended 2/13/01)</u> <u>[Application for Relief from Disability]</u>
27-30-01	Offender Registration
27-30-02	Conditional Discharge of Sex Offenders <u>(Amended 2/13/01)</u>
27-31-01	Use of Chemical Agents in Probation and Parole
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities) <u>(Amended 1/9/01)</u>
28-01-03	Presentence, Postsentence, Supplemental and Partial Investigations
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence or <u>[/]</u> Postsentence Investigation Reports <u>(Amended 2/13/01)</u>
28-02-01	Expedient Release Program
28-03-01	Parole Plans, <u>[/]</u> Halfway Houses, <u>[/]</u> Extended Furlough, <u>[/]</u> Sponsorship, and <u>[/]</u> Gradual Release <u>(Amended 2/13/01)</u>
28-04-01	Furlough Verifications <u>(Amended 2/13/01)</u>
28-05-01	Out-of-state Investigations

(2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM D. CAMPBELL, Commissioner

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 15, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001 at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2001, 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: Tamela Biggs or Jack Damron, Staff Attorneys, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Corrections (Corrections), its respective divisions and state institutions, regarding the rights and responsibilities of Corrections employees, the inmate population and offenders under the supervision of Probation and Parole.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operations of Corrections, its divisions and institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Corrections employees, the inmate population and offenders under supervision as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments shall bring the policies and procedures in compliance with state and federal law, including KRS Chapter 13A, and ACA Standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Corrections and its divisions and institutions.

(d) How the amendment will assist in the effective administration of the statutes: It will make minor changes to conform to KRS Chapter 13A, to allow a clearer understanding of the policies by employees, the inmate population, and offenders under the supervision of Probation and Parole, thereby impacting the safety and security of the institutions and the public.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure a clearer understanding of the policies by employees, the inmate population and the offenders under the supervision of Probation and Parole, thereby impacting the security and safety of the institutions and the public.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

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

**JUSTICE CABINET  
Department of Corrections  
Division of Adult Institutions  
(Amendment)**

**501 KAR 6:150. Eastern Kentucky Correctional Complex.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 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 [authorizes the commissioner to adopt, amend or rescind] 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. [These administrative regulations are in conformity with those provisions.]

Section 1. Incorporation by Reference. (1)(a) Eastern Kentucky Correctional Complex Policies and Procedures, February 13, 2001, is [Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised February 14, 1995, are] incorporated by reference [and shall be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures].

(b) It [Copies of the procedures] may be inspected, copied, or obtained, subject to applicable copyright law, at [from] the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, [or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.

(2) Eastern Kentucky Correctional Complex Policies and Procedures include:

EKCC 01-01-01	Institutional Legal Assistance
EKCC 01-02-01	Public Information and News Media Access [(Amended 2/14/95)]
EKCC 01-06-01	Inmate Death
EKCC 01-06-02	Crime Scene Camera
EKCC 01-07-01	Institutional Tours of EKCC
EKCC 01-07-02	EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03	Outside Consultation and Research
EKCC 01-08-01	Monthly Reports
EKCC 01-09-01	Duty Officer Responsibilities
EKCC 01-10-01	Annual Planning Document and Conference
EKCC 01-10-02	Organization and Assignment of Responsibility
EKCC 01-10-03	Institutional Planning
EKCC 01-13-01	Organization of Operations Manual
EKCC 01-13-02	Monitoring of Operations, Policies and Procedures
EKCC 01-13-03	Formulation and Revision of EKCC Operating Procedures
EKCC 01-13-04	Meetings Conducted and Their Purpose
EKCC 02-01-02	Inmate Canteen
EKCC 02-02-01	Fiscal Management: Agency Funds
EKCC 02-05-01	Fiscal Management: Budget
EKCC 02-08-01	Property Inventory
EKCC 02-08-02	Warehouse Operation and Inventory Control
EKCC 02-08-03	Inventory Control, Nonexpendable Items
EKCC 02-08-04	Warehouse Policy and Procedure
EKCC 02-11-01	Purchase and Supply Requisition
EKCC 02-12-01	Fiscal Management: Audits
EKCC 02-13-01	Fiscal Management: Accounting Procedures
EKCC 02-14-01	Screening Disbursements from Inmate Personal Accounts
EKCC 04-01-01	Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01	Emergency Preparedness Training
EKCC 04-02-02	Advisory Training Committee
EKCC 05-01-01	Inmate Participation in Authorized Research
EKCC 05-02-01	Information System
EKCC 06-01-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01	Case Record Management
EKCC 10-02-01	Special Management Unit: Operating Procedures and Living Conditions [(Amended 2/14/95)]
EKCC 10-02-02	Special Management Inmates: Assignment, Classification, Reviews and Release [(Amended 2/14/95)]
EKCC 10-02-03	Grooming Standards for Special Management
EKCC 11-02-01	Meal Planning for General Population
EKCC 11-02-02	Food Service: Purchasing, Storage and Farm Prod-

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	ucts
EKCC 11-03-01	Food Service: Menu, Nutrition and Special Diets
EKCC 11-04-01	Food Service: Inspections and Sanitation
EKCC 11-04-02	Medical Screening of Food Handlers
EKCC 11-05-01	Food Service: Security
EKCC 11-06-01	Food Service: Kitchen and Dining Room Inmate Worker Responsibilities
EKCC 11-07-01	Dining Room Guidelines
EKCC 11-08-01	OJT Food Service Training Placement
EKCC 12-01-01	Vermin and Insect Control
EKCC 12-02-01	Inmate Dress and Use of Access Areas
EKCC 13-01-01	Pharmacy Policy
EKCC 13-02-01	Emergency Medical Procedure
EKCC 13-02-03	Consultations
EKCC 13-02-04	Medical Services
EKCC 13-02-05	Health Evaluations [(Amended 2/14/95)]
EKCC 13-02-06	Sick Call
EKCC 13-02-07	First Aid Kits
EKCC 13-05-01	Aids and Hepatitis B
EKCC 13-07-01	Serious Illness, Major Injuries, Death
EKCC 13-08-01	Psychiatric and Psychological Services
EKCC 13-08-02	Psychiatric and Psychological Services Team
EKCC 13-08-03	Suicide Prevention and Intervention Program
EKCC 13-08-04	Detoxification
EKCC 13-09-01	Dental Services for Special Management Units
EKCC 13-10-01	Optometric Services
EKCC 13-12-02	Resident Transfer/Medical Profiles
EKCC 13-13-01	Syringes, Needles and Sharps Control
EKCC 13-14-01	Fire and Emergency Evacuation Plan
EKCC 13-15-01	Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements
EKCC 13-16-01	Medical Records
EKCC 14-02-01	Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01	Inmate Legal Services
EKCC 14-06-01	Inmate Grievance Procedure
EKCC 14-07-01	Inmate Rights and Responsibilities
EKCC 15-01-01	Hair and Grooming Standards: Inmate Barber Shop [(Amended 2/14/95)]
EKCC 15-02-01	Restricted Wing [(Added 2/14/95)]
EKCC 15-05-01	Restoration of Forfeited Good Time
EKCC 15-06-01	Due Process/Disciplinary Procedure [(Amended 2/14/95)]
EKCC 16-01-01	Inmate Visiting [(Amended 2/14/95)]
EKCC 16-02-01	Inmate Correspondence
EKCC 16-03-01	Inmate Telephone Procedures
EKCC 16-05-01	Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02	Unit Bulletin Boards
EKCC 17-01-01	Authorized Inmate Personal Property
EKCC 17-01-02	Personal Property Control
EKCC 17-02-01	Assessment/Orientation
EKCC 17-04-01	Inmate Reception Process at the EKCC
EKCC 18-01-01	Inmate Classification
EKCC 18-10-01	Parole Progress Report
EKCC 18-13-01	Meritorious Housing
EKCC 18-13-02	<u>Restricted Wing - Enhanced Supervision Unit (Added 2/13/01)</u>
EKCC 18-13-03	Enhanced Supervision Unit
EKCC 19-04-01	Inmate Work Program
EKCC 20-01-01	Educational Program
EKCC 21-01-01	Library Services
EKCC 22-02-01	Recreation and Inmate Activities
EKCC 23-01-01	Religious Services
EKCC 23-01-02	Muslim Services - Ramadan
EKCC 24-01-01	Social Services and Counseling Program
EKCC 25-02-01	Inmate Discharge Procedure
EKCC 25-03-01	Prerelease Preparation
EKCC 25-04-01	Inmate Furloughs
EKCC 25-06-01	Community Center Program
EKCC 26-01-01	Citizens Involvement and Volunteers

TOM D. CAMPBELL, Commissioner

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 15, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001 at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2001, 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: Tamela Biggs or Jack Damron, Staff Attorneys, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Eastern Kentucky Correctional Complex regarding the rights and responsibilities of Eastern Kentucky Correctional Complex employees and the inmate population.

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

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation governs every aspect of the operations of Eastern Kentucky Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Eastern Kentucky Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment shall provide for placement of an inmate into a restricted area due to the inmate presenting a serious threat to the safety and security of the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Warden or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Eastern Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: Inmates who pose a serious threat to the safety and security of Eastern Kentucky Correctional Complex and to staff, visitors or other inmates shall be placed in a specific area of the institution where they can be more directly supervised.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 396 employees of Eastern Kentucky Correctional Complex, 1601 inmates, and all visitors to the Eastern Kentucky Correctional Complex.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this new policy within the regulation shall provide a safer environment for staff, inmates, and visitors to the Eastern Kentucky Correctional Complex.

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

(a) Initially: None

- (b) On a continuing basis: None
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from Eastern Kentucky Correctional Complex budget.
- (7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
- (9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE CABINET**  
**Department of Corrections**  
**Division of Adult Institutions**  
**(Amendment)**

**501 KAR 6:170. Green River Correctional Complex.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 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 Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, February 13, 2001 [December 12, 2000], is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-01-01	Establishment of the GRCC Institutional Operations Manual	GRCC 02-01-03	Fiscal Management Agency Funds ( <u>Amended 2/13/01</u> )
GRCC 01-01-02	Organization of GRCC Operations Manual	GRCC 02-01-04	Fiscal Management Insurance
GRCC 01-01-03	Formulation and Revision of GRCC Operating Procedures	GRCC 02-02-01	Fiscal Management: Budget
GRCC 01-02-01	Organization and Assignment of Responsibility ( <u>Amended 2/13/01</u> )	GRCC 02-03-01	Fiscal Management: Audits ( <u>Amended 2/13/01</u> )
GRCC 01-03-01	Staff Meetings, Purpose and Requirements ( <u>Amended 2/13/01</u> )	GRCC 02-04-01	Purchase and Supply Requisitions
GRCC 01-04-01	Monthly Reports	GRCC 02-05-01	Warehouse Operation
GRCC 01-05-01	Procedures Officer	GRCC 02-06-01	Inmate Canteen
GRCC 01-06-01	Inmate Access to and Communication with GRCC Staff ( <u>Amended 2/13/01</u> )	GRCC 02-06-02	Inmate Canteen Committee ( <u>Amended 2/13/01</u> )
GRCC 01-07-01	Institutional Tours of GRCC	GRCC 02-07-01	Inmate Personal Funds
GRCC 01-08-01	GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive and Community Agencies	GRCC 02-08-01	Inventory Control
GRCC 01-09-01	Duty Officer Responsibilities ( <u>Amended 2/13/01</u> )	GRCC 03-01-01	General Guidelines for GRCC Employees ( <u>Amended 2/13/01</u> )
GRCC 01-10-01	Smoking: GRCC Facility ( <u>Amended 2/13/01</u> )	GRCC 03-02-01	Essential Personnel During Inclement Weather or Emergency Conditions
GRCC 01-11-01	Institutional Planning	GRCC 03-03-01	Employee Recognition Program
GRCC 01-12-01	Public Information and Media Communication ( <u>Amended 2/13/01</u> )	GRCC 03-04-01	Employee Grievance and EEO Complaint Procedure
GRCC 02-01-01	Fiscal Management Organization	GRCC 03-05-01	Drug Free Work Place
GRCC 02-01-02	Fiscal Management Accounting Procedures	GRCC 03-06-01	Organization of Payroll and Personnel Records ( <u>Amended 2/13/01</u> )
		GRCC 03-07-01	Personnel Staffing Review
		GRCC 03-08-01	Personnel Registers
		GRCC 03-09-01	Selection and Promotion of Employees
		GRCC 03-10-01	Medical Examination for New Employees
		GRCC 03-11-01	Kentucky Employee Assistance Program
		GRCC 03-12-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
		GRCC 03-13-01	Employee Evaluations
		GRCC 03-14-01	Student Placement Program
		GRCC 03-15-01	Documentation Requirement Guidelines
		GRCC 03-16-01	New Employee Orientation
		GRCC 03-17-01	Resignation, Transfer or Termination Clearance Procedure
		GRCC 04-01-01	Employee Training and Staff Development
		GRCC 05-01-01	Information System ( <u>Amended 2/13/01</u> )
		GRCC 05-02-01	Outside Consultation and Research
		GRCC 06-01-01	Offender Records
		GRCC 06-02-01	Storage of Expunged Records
		GRCC 07-01-01	Maintenance Requests
		GRCC 07-02-01	Preventive Maintenance Program
		GRCC 07-03-01	Mechanical Equipment Repair and Control of Hazardous Energy
		GRCC 08-01-01	Occupational Exposure to Serious and Infectious Diseases ( <u>Amended 2/13/01</u> )
		GRCC 08-02-01	Fire Safety ( <u>Amended 2/13/01</u> )
		GRCC 08-04-01	Control of Caustic, Toxic, Flammable, Hazardous and Other Materials
		GRCC 08-04-02	Hazardous Chemicals and Material Safety Data Sheet
		GRCC 09-01-01	Inmate Counts
		GRCC 09-02-01	Drug Abuse Testing
		GRCC 09-09-01	Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence
		GRCC 09-13-01	Establishment of Security Posts at GRCC
		GRCC 09-14-01	Vehicle Usage
		GRCC 10-01-01	Special Management Unit ( <u>Amended 2/13/01</u> )
		GRCC 11-01-01	Food Service Guidelines
		GRCC 11-02-01	Food Service: Security
		GRCC 11-03-01	Dining Room Guidelines
		GRCC 11-04-01	Food Service: Meals
		GRCC 11-04-02	Food Service: Menu, Nutrition and Special Diets
		GRCC 11-06-01	Health Requirements of Food Handlers
		GRCC 11-07-01	Food Service: Inspections and Sanitation
		GRCC 12-01-01	Clothing, Bedding, Hygiene Supplies and Barber Services
		GRCC 12-02-01	Sanitation Inspections ( <u>Added 2/13/01</u> )
		GRCC 12-03-01	Vermin and Insect Control ( <u>Added 2/13/01</u> )
		GRCC 13-01-01	Organization of Medical Services [ <u>Amended 8/14/00</u> ]
		GRCC 13-02-01	Medical Services: Sick Call, Physician's Clinics



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GRCC 13-02-02	and Pill Call [(Amended 8/14/00)] Medical Services: Copayment [(Amended 8/14/00)]
GRCC 13-02-03	Continuing of Care: Health Evaluations, Intra-system Transfer, Individual Treatment Plans [(Amended 8/14/00)]
GRCC 13-03-01	Use of Pharmaceutical Products [(Amended 8/14/00)]
GRCC 13-04-01	Health Records [(Amended 8/14/00)]
GRCC 13-04-02	Psychological and Psychiatric Reports [(Amended 8/14/00)]
GRCC 13-05-01	Management of Serious and Infectious Diseases [(Amended 8/14/00)]
GRCC 13-06-01	Mental Health Services [(Amended 8/14/00)]
GRCC 13-07-01	Medical Restraints [(Amended 8/14/00)]
GRCC 13-08-01	Eye Care [(Amended 8/14/00)]
GRCC 13-09-01	Dental Care [(Amended 8/14/00)]
GRCC 13-10-01	Transfers and Medical Profiles [(Amended 8/14/00)]
GRCC 13-11-01	Informed Consent [(Amended 8/14/00)]
GRCC 13-12-01	Infirmary Care [(Amended 8/14/00)]
GRCC 13-13-01	Inmate Self-administration of Medication [(Amended 8/14/00)]
GRCC 13-15-01	Health Education Program and Detoxification [(Amended 2/13/01)]
GRCC 14-01-01	Inmate Rights and Responsibilities
GRCC 14-02-01	Legal Services Program (Amended 2/13/01)
[GRCC 15-01-01]	<del>GRCC Adjustment Program and Procedures (Deleted 2/13/01)]</del>
GRCC 16-01-01	Inmate Visiting
GRCC 16-02-02	Inmate Correspondence and Privileged Mail
GRCC 16-03-01	Inmate Telephone Communications
GRCC 16-04-01	Inmate Packages
GRCC 17-01-01	GRCC Inmate Property Control
GRCC 17-02-01	GRCC Inmate Receiving and Orientation Process
GRCC 17-03-01	Procedure for Sending Televisions to Outside Dealer for Repair
GRCC 18-01-01	Inmate Classification
GRCC 18-02-01	Meritorious Housing
GRCC 18-02-02	Meritorious Visitation Program
GRCC 19-01-01	Inmate Work Programs
GRCC 19-01-02	Unassigned Status
GRCC 20-01-01	Educational Programs (Amended 2/13/01)
GRCC 21-01-01	Library Services (Amended 2/13/01)
GRCC 22-01-01	Recreation Programs
GRCC 22-02-01	Inmate Organizations
GRCC 22-03-01	<u>Employee Use of Recreation Facilities (Added 2/13/01)</u>
GRCC 22-04-01	Arts and Crafts Project
GRCC 22-05-01	Inmate Photo Project
GRCC 23-01-01	Religious Programs
GRCC 23-02-01	Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
GRCC 24-01-01	Social Services and Counseling Program
GRCC 25-01-01	Prerelease Program
GRCC 25-01-02	Inmate Release Process
GRCC 25-02-01	Parole Hearing Procedure

TOM D. CAMPBELL, Commissioner

APPROVED BY AGENCY: February 8, 2001

FILED WITH LRC: February 15, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001 at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2001, 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: Tamela Biggs or Jack Damron, Staff Attorneys, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Green River Correction Complex including the rights and responsibilities of Green River Correctional Complex employees and the inmate population.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operation of Green River Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Green River Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments will make minor changes to satisfy KRS Chapter 13A requirements, compliance with ACA Standards and CPP's, and show actual practice of the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Green River Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make minor changes to conform to KRS Chapter 13A and will allow a clearer understanding of the policies by the Green River Correctional Complex employees and inmate population in order for the institution to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 242 employees of the Green River Correctional Complex and 912 inmates and all visitors to Green River Correctional Complex.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Green River Correctional Complex employees and inmate population will have a clearer understanding of the policies and areas of responsibility.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulations applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to these administrative regulations could raise questions of arbitrary action on the part of the agency. The 'equal protection' and 'due process' clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well

as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET  
Kentucky Law Enforcement Council  
(Amendment)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (e), 15.386, 15.440(4)  
STATUTORY AUTHORITY: KRS 15.330(1)(e), (g) [15A-160]  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(e) and (g) authorize [authorizes] the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and promulgate administrative regulations. This administrative regulation prescribes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. (1) [(1)] To graduate from the department's basic training course, a recruit shall:

(1) [(a)] Successfully complete a minimum of 640 hours of council-approved training.

(2) [(b)] Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training.

(3) [(c)] Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training.

(4) [(d)] Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. [(e)] Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380, et seq. [to-15.402], shall meet the physical training entry and graduation requirements.

(1) [(1)] Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. [(a)] Sixteen (16) inch vertical jump;
2. [(b)] One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight;
3. [(c)] Eighteen (18) sit-ups in one (1) minute;
4. [(d)] 300 meter run in sixty-five (65) seconds;
5. [(e)] Twenty (20) pushups;
6. [(f)] One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

(b) [(2)] If a recruit passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements.

(c) [(3)] Retest. If a recruit fails to pass all events when participating in the physical training entry test:

1. [(a)] He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test. If the retest cannot [may not] be attempted due to unsuitable weather conditions, the period shall be extended until the conditions are acceptable for completion of the retest, but shall not exceed five (5) days from the date of the entry test.

2. [(b)] All failed events shall be retested on the same date.

3. [(c)] If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training entry requirements.

4. [(d)] If the recruit does not pass all previously failed events on the date of the retest, he shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and

may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) [(4)] Physical training graduation requirements.

(a) Within five (5) days from the final date of the basic training course the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. [(a)] Seventeen (17) inch vertical jump;
2. [(b)] One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;
3. [(c)] Eighteen (18) sit ups in one (1) minute;
4. [(d)] 300 meter run in sixty-five (65) seconds;
5. [(e)] Twenty-five (25) push ups;
6. [(f)] One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.

(b) [(5)] If a recruit passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.

(c) [(6)] Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. [(a)] He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the graduation test, but not later than the final date of the basic training course.

2. [(b)] All failed events shall be retested on the same date.

3. [(c)] If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training graduation requirements.

4. [(d)] If the recruit does not pass all previously failed events on the date of the retest, he shall be considered to have failed basic training.

Section 3. Failure and Repetition of Basic Training. (1) [(2)] A recruit who has failed a basic training course shall be permitted to repeat one (1) basic training course in its entirety during the following twelve (12) months.

(2) The recruit or his agency shall pay all fees [must pay the tuition] for the repeated basic training course.

Section 4. Examinations. (1) Basic training shall consist of the following three (3) areas:

(a) Area I:

1. Four (4) academic tests; and

2. First aid and CPR, including:

a. Professional rescuer CPR; and

b. First aid;

(b) Area II:

1. Firearms, including:

a. Day handgun;

b. Night handgun; and

c. Shotgun;

2. Vehicle operations, including:

a. Precision course; and

b. Emergency response course;

3. Defensive tactics;

(c) Area III:

1. Breath test, including:

a. Practical examination; and

b. Written examination;

2. DUI detection, including:

a. Practical examination; and

b. Written examination;

3. Law Information Network of Kentucky (LINK) and National Crime Information Center (NCIC) inquiry only, combined practical and written examination.

(2) A recruit shall be permitted one (1) reexamination in each of the three (3) areas of basic training.

(3) A recruit who fails an examination, other than defensive tactics, shall not be reexamined:

(a) Earlier than twenty-four (24) hours from the original examination; or

(b) Later than:

1. Thirty (30) days after the original examination; or

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2. The last scheduled day of the basic training course.

(4) A recruit who fails a defensive tactics examination shall not be reexamined:

(a) Earlier than the last scheduled day of defensive tactics training; or

(b) If the failure occurs on the last scheduled day of defensive tactics training:

1. Earlier than twenty-four (24) hours from the original examination; or

2. Later than the last scheduled day of the basic training course.

(5) A recruit shall be considered to have failed basic training if the recruit:

(a) Fails a reexamination; or

(b) Fails two (2) examinations in the same area of basic training.

[(3) Reexamination:

(a) A recruit shall only be permitted one (1) reexamination in an academic area, and one (1) reexamination in a skills area. Upon failure of any two (2) academic examinations, including a reexamination, a recruit shall be considered to have failed basic training. Upon failure of any two (2) skills examinations, including a reexamination, a recruit shall be considered to have failed basic training.

(b) A recruit who fails a skills or academic examination may be permitted to be reexamined in that area no earlier than twenty-four (24) hours but no later than thirty (30) days after the failure.]

Section 5. [(4)] Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the 640 hours of basic training shall be made up through an additional training assignment.

Section 6. Circumstances Preventing Completion of Basic Training. If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of basic training does not last for a period of longer than one (1) year;

(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition. [(5) In the event of extenuating circumstances beyond the control of the recruit including injury, illness, personal tragedy, or agency emergency, which occurs during a basic training course which prevents a recruit from completing a basic training course, a recruit shall complete the unfinished areas within 180 days after the termination of the extenuating circumstances, provided the duration of the extenuating circumstances does not exceed one (1) year. This right to complete a basic training course shall not be applicable wherein the failure to complete is caused by a preexisting physical injury, or an existing or a preexisting physiological condition. This right to complete a basic training course shall be limited to one (1) attempt per calendar year.]

Section 7. Termination of Employment while Enrolled. If while enrolled in the basic training course, a recruit's employment as a police officer is terminated by resignation or dismissal and he is unable to complete the course, he shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course. [(6) If a recruit's employment as a police officer is terminated by resignation or dismissal while enrolled and prior to completion of a basic training course and later becomes reemployed as a police officer, is unable to complete a basic training course, he shall complete the unfinished areas within one (1) year after a return to duty or reemployment as an officer, provided, however, the break in employment or duty may not exceed one (1) year. This right to complete basic training shall not be applicable when the termination is a result, directly or indirectly, of disciplinary action taken by

the department against the recruit while enrolled in the basic training course.]

Section 8. [2:] Maintenance of Records. (1) At the conclusion of each basic training course, the department shall, for each recruit who has attended the course, complete and send the following forms to the council:

(a) DOCJT Form 68-1 (Application for Training Credit); and

(b) DOCJT Form 29 (Agency Training Authorization).

(2) A copy of DOCJT Form 68-1 shall be sent to the council, verified, and sent to the fund administrator.

(3) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(4) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with standards established by the State Archives and Records Commission, pursuant to KRS 171.410 to 171.740. [The department shall, at the conclusion of each basic training course, complete the Department of Criminal Justice Training Form 68-1 (Application for Training Credit), and the Department of Criminal Justice Training Form 29 (Agency Training Authorization) for each recruit who has attended the course. Form 68-1 shall be sent to the council. After verification by the council, a copy of the form shall be sent to the fund administrator. All training records required for fund purposes shall be retained by the department but a copy of pertinent facts shall be sent to the fund administrator upon written request. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission pursuant to KRS 171.410 to 171.740.]

Section 9. [3:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department of Criminal Justice Training Form 68-1 - Application for Training Credit" (02/26/96 edition); and

(b) "Department of Criminal Justice Training Form 29 - Agency Training Authorization" (06/27/97 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBIN COOPER, Chair

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 15, 2001 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001, at 9 a.m. in Room 408, Funderburk Building, Richmond, Kentucky, 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2001, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Phone (859) 622-5897, Fax (859) 622-3162.

### REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1)(a) What this administrative regulation does: Establishes the

guidelines and procedures for graduation from the Department of Criminal Justice Training (DOCJT) basic training course.

(b) Necessity of this administrative regulation: The regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met the requirements for completion of law enforcement training, specifically basic training which is necessary for participation in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(g) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How this regulation currently assists in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(2)(a) How the proposed amendment will change the existing regulation: The present amendment revises graduation requirements to divide basic training into 3 clearly defined areas, allowing a third retest for recruits before they are considered to have failed basic training. Additionally, the amendment clarifies procedures for retesting, and corrects language and reorganizes the regulation for clarity and accuracy.

(b) Necessity of the amendment: The division of basic training into 3 areas, and the reorganization of topics within each area should reduce the number of failures from basic training without compromising the quality of the training received by recruits. This will have a positive effect for the agencies utilizing DOCJT basic training since a reduced failure rate will assist agencies in achieving optimum personnel numbers, which will facilitate agencies in providing better law enforcement services to their communities. Additionally, the change will lower expenses since an agency that chooses to allow a recruit to repeat basic training must do so at the agency's cost, which exceeds \$12,000 in fees for training alone.

(c) How this amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) herein.

(d) How this amendment will assist in the effective administration of the statutes: The clarification of language in the regulation, including testing requirements, better defines procedures and expectations for recruits in order to become certified as peace officers, and gain eligibility for KLEFPF participation.

(3) Type and number of entities affected: all law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, and the Lexington, Louisville and Jefferson County Police Departments.

(4) How the aforesaid entities will be impacted by the amendment of this regulation: It is anticipated that agencies should experience positive results from the amendment due to fewer recruit basic training failures, and in the associated reduction in costs for the agencies. (Please see the response contained in (2)(b) herein).

(5) Cost to implement this amendment to the regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) Source of funding to be used for implementation and enforcement of administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Assessment of whether an increase in fees or funding shall be necessary to implement the amendment to this regulation: No

(8) Does this administrative regulation directly or indirectly increase any fees: No

(9) 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. Disparate treatment of any person or entity subject to this administrative

regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect: Local law enforcement agencies including city, urban-county, and county police officers, and sheriff's departments, who are required, or may choose, to employ certified peace officers, and those agencies that participate in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(3) State the aspect or service of local government to which this administrative regulation relates: KRS 15.380(1)(b) and (c) specifically require city, county, and urban-county police officers, and deputy sheriffs (with specific exceptions) to be certified, which includes the completion of basic training.

(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: Effect on revenue is unlikely. Expenditures cannot be estimated since costs will depend on the initial size of local units of law enforcement and any change in number of personnel including growth or turnover. Agencies regularly incur costs when hiring new officers, however the agencies face no training costs through the Department of Criminal Justice Training (DOCJT) when an officer who must be certified attends basic training for the first time. If an officer/recruit fails basic training, the agency must either hire a new officer to replace them, or send the officer/recruit to repeat the 16 week basic training course at the agency's expense (costs for the repeated basic training course exceed \$12,000 in DOCJT fees alone). The present amendment to the regulation is expected to reduce the number of recruits who fail basic training, thereby lowering costs for the officer/recruit's agency.

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver's Licensing (Amendment)

##### 601 KAR 12:060. Hardship driver's license.

RELATES TO: KRS 189A.400 through 189A.460

STATUTORY AUTHORITY: KRS 189A.460

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.400 through 189A.460 provides for the issuance of a hardship driver's license to a person whose driving privilege has been withdrawn for a conviction [of a first-time violation] of KRS 189A.010 [or a person who is under the age of twenty-one (21) years, who has been accused of a first-time violation of KRS 189A.010 and who did not refuse to take an alcohol concentration or substance test]. The district court withdrawing the person's driving privilege has exclusive jurisdiction to decide whether the person shall be issued a hardship driver's license. The hardship driver's license is to be issued by the Transportation Cabinet. The circuit court clerks, acting on behalf of the Kentucky Transportation Cabinet, [issue all motor vehicle operator's licenses. It is the Transportation Cabinet's intention that the circuit court clerks] shall [also] issue the hardship driver's license. KRS 189A.460 requires the Transportation Cabinet to promulgate administrative regulations relating to the implementation of the hardship driver's license provisions of KRS Chapter 189A. Therefore, this administrative regulation sets forth procedures to be followed in applying to the circuit court clerk for a hardship driver's license and for the circuit clerk to issue the license. It further sets forth the fee for the hardship driver's license, provides for cancellation of a hardship driver's license, and allows a replacement hardship driver's license to be issued.

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**Section 1. Issuance of Hardship Driver's License.** (1) A person who has been given a court order authorizing the issuance of a hardship driver's license by the district court which withdrew his driving privilege, shall apply for the issuance of the license at the driver licensing issuance office of the circuit court clerk in his county of residence.

(2) The license to be issued by the circuit clerk shall be a photo license clearly designated "hardship" on the face of the license.

(3) He shall not be issued a hardship driver's license sooner than the expiration of the minimum license suspension period imposed by the court in accordance with KRS 189A.010(6), 189A.070, 189A.107, or 189A.410.

(4) If the court requires an ignition interlock device as a condition of the hardship license, 601 KAR 2:030 shall be applicable. [31st day of his ninety (90) day driving privilege withdrawal period imposed by the district court in accordance with KRS 189A.070 or 189A.200.]

**Section 2. Submission of Withdrawal Notice.** (1) When applying for the issuance of the hardship driver's license, the applicant shall present the district court order granting hardship driving privilege, the driving privilege withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, and some form of identification to the driver licensing issuance office.

(2) If the applicant does not have the withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, the circuit court clerk shall contact the Division of Driver Licensing to determine the date of expiration of the hardship driver's license.

**Section 3. Eligibility.** [If the applicant for the hardship driver's license who has been charged with a first-time violation of KRS 189A.010 is under the age of eighteen (18) years, he shall not be issued the hardship driver's license until there are no more than sixty (60) days remaining in his driving privilege withdrawal period.]

**Section 4.** (1) Only a person whose Kentucky operator's license has been suspended or revoked as a result of the current charge of driving while under the influence of alcohol or other impairing substances may be issued a hardship driver's license.

(2) If the applicant for a hardship driver's license is a new Kentucky resident who had his driving privilege withdrawn in another jurisdiction, he shall not be eligible for a hardship driver's license until the jurisdiction imposing the driving privilege withdrawal provides a statement that the person is eligible to have his driving privilege restored.

**Section 4. Hardship Driver's License Fee.** [5:] The applicant for a hardship driver's license shall pay a five (5) dollar fee to the circuit court clerk for his photo hardship driver's license.

**Section 5. Hardship Driver's License Attachments.** [6-(1)] The circuit court clerk shall:

(1) Attach the yellow copy of the court order to the hardship driver's photo license before it is given to the applicant. The hardship driver's license shall not be considered complete or official unless the copy of the court order is attached;

(2) Attach a copy of the court order requiring interlock device installation; and

(3) [:

(2) If the orders, instructions or restrictions of the court are so extensive that they cannot be written in full on the court order from, the court shall [Note on the court order from that additional instructions are attached if the orders, instructions, or restrictions of the court are so extensive that they cannot be written in full. The additional instructions shall be certified or attested and attached to the hardship driver's license in addition to the yellow copy of the court order form in order for the license to be considered complete or official.]

**Section 6. Replacement Hardship Driver's License.** [7:] If a valid hardship driver's license is lost or destroyed, the licensee may apply for a replacement photo license by presenting another copy of the court order and a five (5) dollar fee to the circuit court clerk in the county of his residence.

[Section 8. When the person was convicted of driving under the

influence of intoxicants or other substances in another state or licensing jurisdiction, the Kentucky court of jurisdiction for the purpose of determining if a hardship driver's license should be issued shall be the district court in his county of residence.]

**Section 7. Cancellation of Hardship Driver's License.** (1) [9-(1)] If the district court authorizes the issuance of the hardship driver's license, the circuit court clerk in the person's county of residence shall issue the hardship driver's license:

(2) If the Transportation Cabinet upon review of the person's complete driving history record determines that the person holding a hardship driver's license was not eligible to receive the license, i.e., he did not meet the requirements of KRS 189A.410, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court which authorized the issuance of the hardship driver's license of the hardship license cancellation:

(3) The district court withdrawing the person's driving privilege as a result of the [charge of first-time] violation of KRS 189A.010 has exclusive jurisdiction over the issuance of a hardship driver's license. [If another court were to order that a hardship license be issued, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court which authorized the issuance of the hardship driver's license of the hardship license cancellation:]

(2) [(4)] If the person is convicted of an additional offense which would cause the withdrawal of his driving privilege or reported by a court to have not satisfied an outstanding citation which would cause the withdrawal of his driving privilege, the Transportation Cabinet shall cancel the hardship driver's license and notify the licensee.

**Section 8. Decal Requirements.** [10:] The decal required by KRS 189A.430 shall be placed in the lower corner of the rear window on the driver's side in a motor vehicle which has a rear window. If the motor vehicle does not have a rear window, the decal shall be placed so that it is plainly visible from the rear of the motor vehicle.

JAMES C. CODELL, III, Secretary

ED LOGSDON, Commissioner

APPROVED BY AGENCY: January 22, 2001

FILED WITH LRC: January 25, 2001 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held March 22, 2001, 10 a.m., local prevailing time, in the Transportation Cabinet, 1st floor, Training Rooms A and B, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by, March 15, 2001. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comments hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by March 22, 2001. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on March 22, 2001. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Holland B. Spade, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holland B. Spade

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides procedures for issuance of hardship driver's license.

(b) The necessity of this administrative regulation: Statutory amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth the new standard for hardship licenses in KRS 189A.410.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation coordinates the functions of the court clerks and the cabinet in issuing hardship licenses.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the standard for when a hardship license may be issued and sets up a uniform guideline applicable to all of the violation and penalty levels. It will also acknowledge the court's authority to now require installation of an interlock device as a contingency to receiving the hardship's license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to the legislative amendment that resulted from passage of 2000 Ky. Acts ch. 467.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the new standard set forth in KRS 189A.410.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will assist with coordination of the court procedures and Transportation Cabinet procedures.

(3) List and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: Circuit court clerks, operator's convicted of DUI, Transportation Cabinet, Division of Driver Licensing.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. This should provide a uniform guideline for hardship license eligibility and a clear procedure for obtaining same.

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

(a) Initially: \$6,500.

(b) On a continuing basis: \$8,000 administrative support annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None known.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees: There is a \$5 fee in place now which the amendment does not change.

(9) TIERING: Is tiering applied? No. All persons applying for hardship license follow the same procedure. The eligibility standard is tiered by statute so that eligibility will be sooner for lesser violations.

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
(Amendment)

704 KAR 7:130. Minority teacher recruitment.

RELATES TO: KRS 160.380(2)(d)

STATUTORY AUTHORITY: KRS 156.070, 160.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.380(2)(d) requires each school district superintendent to report annually the school district's recruitment process and the activities used to increase the percentage of minority teachers in the district pursuant to administrative regulations of the Kentucky Board of Education. This administrative regulation establishes the recruitment and annual reporting procedures.

Section 1. The annual report required by KRS 160.380(2)(d) shall:

(1) Be submitted by a school district superintendent to the Department of Education [Division of Minority Teacher Recruitment and Retention]; and

(2) Include:

(a) An education recruitment plan that provides a description of:  
1. Measures of education recruitment success used by the district;  
2. Sources used for recruiting educators;  
3. Strategies and incentives used to ensure productive recruitment results;

4. Strategies used to retain quality educators;  
5. Process used to obtain feedback from newly hired educators;  
and

6. Barriers that impact district recruitment efforts;  
(b) Listing of positions advertised during the current recruitment cycle;

(c) Number of applicants for each advertised position in each category, disaggregated as follows:

1. White not Hispanic;  
2. Black not Hispanic;  
3. Hispanic;  
4. Asian/Pacific Islander; and  
5. American Indian/native Alaskan;

(d) Number of interviews each candidate had and the positions for which the interviews were conducted, disaggregated as follows:

1. White not Hispanic;  
2. Black not Hispanic;  
3. Hispanic;  
4. Asian/Pacific Islander; and  
5. American Indian/native Alaskan;

(e) Number of candidates hired for each advertised position in each category, disaggregated as follows:

1. White not Hispanic;  
2. Black not Hispanic;  
3. Hispanic;  
4. Asian/Pacific Islander; and  
5. American Indian/native Alaskan;

(f) Number of minorities who applied from other states;

(g) Number of minorities who refused positions offered;

(h) A description of the changes that will be made in the recruitment plan if the district did not obtain its measures of success with minority employment; and

(i) The number and name of each minority newspaper, magazine, and journal in which an advertisement for a teacher was placed;

(b) The number and location of each career fair a school district representative attended or sponsored;

(c) The name of each college campus visited by a district representative;

(d) The name and location of each minority organization, including the NAACP, the urban league, or a church, in which a vacancy notice was posted;

(e) A description of the other recruitment efforts that were made;

(f) The number of vacancies in certified teaching positions, administrative positions, and in other administrative support staff (non-certified) positions;

(g) The known number of minority applicants in each category;

(h) The number of minority applicants interviewed in each category;

(i) The number of minorities hired in each category;

(j) The number of minorities offered, but who declined, positions in each category;

(k) The total number of positions filled; and

(l) The signature of the district superintendent certifying that the information is correct and in compliance with KRS 160.380(2)(d).

Section 2. In collecting data to complete the annual report, each school district shall have on its application for employment a section for voluntary ethnic identification.

Section 3. For a nonprincipal certified vacancy at a school-based decision making school, the principal shall comply with the local school district's affirmative action policy or plan in making the hiring decision. For a principal vacancy for which a school council has hiring authority, the school council shall comply with the local school district's affirmative action policy or plan in making the hiring decision.

GENE WILHOIT, Commissioner of Education  
HELEN MOUNTJOY, Chairperson



APPROVED BY AGENCY: February 7, 2001

FILED WITH LRC: February 8, 2001 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 28, 2001, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by March 21, 2001, 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 AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 160.380(2)(d) requires each school district superintendent to report annually the school district's recruitment process and the activities used to increase the percentage of minority teachers in the district pursuant to the administrative regulations of the Kentucky Board of Education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the recruitment and annual reporting procedures for local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation designates the local district reporting responsibilities as authorized by the statute and outline the steps in the reporting process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It articulates the Kentucky Board of Education's authority addressed in the statute.

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

(a) How the amendment will change this existing administrative regulation: The changes in the regulations provide clarity as to specific information that must be provided by local districts. It also is designed to eliminate the reporting of duplicate counts and to determine the number of minority applicants forwarded to school councils for interviews in each school district.

(b) The necessity of the amendment to this administrative regulation: Without the amendment, the Kentucky Board of Education would continue to receive duplicate data and would have little or no understanding about the number of minority applicants receiving interviews by school councils for principal positions.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes local superintendents to report annually the local district recruitment process and the activities used to increase the number of minority teachers in the district. The regulation designates the structure for this requirement to take place.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 school districts.

(4) Provide an assessment of how the above group will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Funding is available in the budget of the Division of Minority Educator Recruitment and Retention to support the implementation, enforcement and analysis of the data to be collected.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

##### 811 KAR 1:005. Definitions.

RELATES TO: KRS 230.215(1), (2) [230.630(3), (7)]

STATUTORY AUTHORITY: KRS 230.215(1), (2) [230.630(3), (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the commission's rules and administrative regulations.

Section 1. Added Money Early Closing Event. An event closing in the same year in which it is to be contested in which all entrance and declaration fees received are added to the purse.

Section 2. Appeal. A request for the commission to investigate, consider, and review any decisions or rulings of judges or officials of a meeting. The appeal may deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of races.

Section 3. Claiming Race. One in which any horse starting therein may be claimed for a designated amount in conformance with the rules.

Section 4. Classified Race. A race regardless of the eligibility of horses, entries being selected on the basis of ability or performance.

Section 5. Commission. Shall at all times mean the Kentucky Harness Racing Commission.

Section 6. Conditioned Race. An overnight event to which eligibility is determined according to specified qualifications. Such qualifications may be based upon, among other things:

(1) Horses' money winnings in a specified number of previous races or during a specified previous time.

(2) A horse's finishing position in a specified number of previous races or during a specified period of time.

(3) Age.

(4) Sex.

(5) Number of starts during a specified period of time.

(6) Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada.

(7) Or any one (1) or more combinations of the qualifications herein listed.

(8) Use of records or time bars as a condition is prohibited.

Section 7. Dash. A race decided in a single trial. Dashes may be given in a series of two (2) or three (3) governed by one (1) entry fee for the series, in which event a horse must start in all dashes. Positions may be drawn for each dash. The number of premiums awarded shall not exceed the number of starters in the dash.

Section 8. Declarations. A declaration is the naming of a particular horse to a particular race as a starter. [Declarations shall be taken not more than three (3) days in advance for all races except those for which qualifying dashes are provided.]

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Section 9. Disqualification. It shall be construed to mean that the person disqualified is debarred from acting as an official or from starting or driving a horse in a race, or in the case of a disqualified horse, it shall not be allowed to start.

Section 10. Early Closing Race. A race for a definite amount to which entries close at least six (6) weeks preceding the race. The entrance fee may be on the installment plan or otherwise, and all payments are forfeits.

Section 11. Elimination Heats. Heats of a race split according to 811 KAR 1:050, Sections 2 and 3, to qualify the contestants for a final heat.

Section 12. Entry. (1) Two (2) or more horses starting in a race when owned or trained by the same person, or trained in the same stable or by the same management.

(2) For purposes of early closing, late closing and stakes races only, an entry is the mandatory coupling of horses as a single wagering interest in a single race when:

(a) horses in the race are owned wholly or partially by the same owner; or

(b) a trainer of one (1) horse has an ownership interest in another horse in that race. These provisions do not apply to horses trained by the same trainer but separately owned.

Section 13. Expulsion. Whenever the penalty of expulsion is prescribed in these rules, it shall be construed to mean unconditional exclusion and disqualification from any participation, either directly or indirectly, in the privileges and uses of the course and grounds of a track licensee.

Section 14. Extended Pari-mutuel Meetings. An extended pari-mutuel meeting is a meeting or meetings, at which no agricultural fair is in progress, with an annual total of more than six (6) days duration with pari-mutuel wagering.

Section 15. Futurity. A stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

Section 16. Green Horse. One that has never trotted or paced in a race or against time, either double or single.

Section 17. Guaranteed Stake. Same as a stake, with a guarantee by the party opening it that the sum shall not be less than the amount named.

Section 18. Handicap. A race in which performance, sex or distance allowance is made. Post positions for a handicap may be assigned by the racing secretary. Post positions in a handicap claiming race may be determined by claiming price.

Section 19. Heat. A single trial in a race, two (2) in three (3), or three (3) heat plan.

Section 20. In Harness. When a race is made to go "in harness" it shall be construed to mean that the performance shall be to a sulky.

Section 21. Late Closing Race. A race for a fixed amount to which entries close less than six (6) weeks and more than three (3) days before the race is to be contested.

Section 22. Length of Race and Number of Heats. Races or dashes shall be given at a stated distance in units not shorter than one-sixteenth (1/16) of a mile. The length of a race and the number of heats shall be stated in the conditions. If no distance or number of heats are specified, all races shall be a single mile dash except at fairs and meetings of a duration of six (6) days or less, where the race will be conducted in two (2) dashes at one (1) mile distance.

Section 23. Licensee; Association. The term "licensee" means an individual, firm, association, partnership, corporation, trustee or legal representative, licensed to conduct a harness race meeting under the

provisions of the Kentucky Revised Statutes.

Section 24. Maiden. A stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered. Races or purse money awarded to a horse after the "official sign" has been posted shall not be considered a winning performance or affect status as a maiden.

Section 25. Match Race. A race which has been arranged and the conditions thereof agreed upon between the contestants.

Section 26. Matinee Race. A race with no entrance fee and where the premiums, if any, are other than money.

Section 27. Overnight Event. A race for which entries close not more than three (3) days (omitting Sundays) or less before such race is to be contested. In the absence of conditions or notice to the contrary, all entries in overnight events must close not later than 12 noon the day preceding the race.

Section 28. Protest. An objection, properly sworn to, charging that a horse is ineligible to a race, alleging improper entry or declaration or citing any act of an owner, driver or official prohibited by the rules, and which, if true, should exclude the horse or driver from the race.

Section 29. Record. The fastest time made by a horse in a heat or dash which he won. A Standard Record is a record of 2:20 or faster for two (2) year olds and 2:15 or faster for all other ages.

Section 30. Stake. A race which will be contested in a year subsequent to its closing in which the money given by the track conducting the same is added to the money contributed by the nominators, all of which except deductions for the cost of promotion, breeders or nominators awards belongs to the winner or winners. In any event, except as provided in 811 KAR 1:040, Section 6, all of the money contributed by the nominators must be paid to the winner or winners.

Section 31. Two (2) in Three (3). In a two (2) in three (3) race a horse must win two (2) heats to be entitled to first money.

Section 32. Two (2) Year Olds. No two (2) year old shall be permitted to start in a dash or heat exceeding one (1) mile in distance, and no two (2) year old shall be permitted to race in more than two (2) heats or dashes in any single day. Starting any two (2) year old in violation of this rule shall subject the track to a fine of not less than twenty-five (25) dollars and the winnings of such two (2) year old shall be declared unlawful.

Section 33. Walk Over. When only horses in the same interest start, it constitutes a walk over. In a "stake race" a "walk over" is entitled to all the stake money and forfeits unless otherwise provided in the published conditions. To claim the purse the entry must start and go once over the course.

Section 34. Winner. The horse, whose nose reaches the wire first. If there is a dead heat for first, both horses shall be considered winners. Where two (2) horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary and the time, both horses shall be considered winners.

Section 35. Wire. The wire is a real or imaginary line from the center of the judge's stand to a point immediately across, and at right angles to the track.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

##### (1) Narrative summary of:

(a) What the administrative regulation does: This regulation defines terms used in the standardbred administrative regulations.

(b) The necessity of the administrative regulations: This regulation defines terms used in all the standardbred regulations enabling lay people to better understand the definition of terms that are frequently used.

(c) How the administrative regulation conforms to the content of the authorizing statutes: The commission has full authority to prescribe rules, regulations, and conditions under which standardbred racing shall be conducted in Kentucky.

(d) How the administrative regulations currently assists or will assist in the effective administration of the statutes: This administrative regulation defines all terms that are used extensively in conduction standardbred racing.

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

(a) How the amendment will change the existing administrative regulation: The only change of this administrative regulation is to the definition of declarations. The old language does not clearly define what a declaration is.

(b) The necessity of the amendment of the administrative regulation: The previous language of declaration only described when the declaration would be taken not what it actually was.

(c) How the amendment conforms to the content of the authorizing statutes: According to KRS 230.215(3) gives the commission full authority to prescribe rules and conditions of standardbred racing in the state.

(d) How the amendment will assist in the effective administration of the statutes: It will clarify what the term declaration means.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The only people or entities affected will be those no knowledge of the standardbred language.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is a amendment to an existing administrative regulation: The amendment will give those people with no knowledge of race track language a better understanding of what a starter is.

(5) An estimate of how much is will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: this administrative regulation will not increase any license fees.

(9) TIERING: Is tiering applied? Tiering was not applied. This amendment only deals with the terminology of the word declaration as related to standardbred racing.

#### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

##### 811 KAR 1:015. Race officials.

RELATES TO: KRS 230.240(1)

STATUTORY AUTHORITY: KRS 230.240(1), 230.260(3), 230.310

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to set out the required officials, their functions and duties.

Section 1. Officials Required. (1) In every race, there shall be:

- (a) A presiding judge;
  - (b) Two (2) associate judges;
  - (c) Except as provided in subsection (2) of this section, not less than two (2) patrol judges;
  - (d) A racing secretary;
  - (e) [(3)] A starter;
  - (f) A clerk of the course; and
  - (g) 1. Three (3) timers; or
  - 2. One (1) timer and an approved electric timing device.
- (2) If a patrol car is used:
- (a) One (1) associate judge may ride in the car; and
  - (b) The patrol judges may be eliminated.

Section 2. (1) An official shall be licensed and approved by the commission.

(2) With the exception of the timer, prior to consideration by the commission for appointment as a race official, a person shall:

- (a) Have attended a United States Trotting Association Officials School; and
- (b) Satisfactorily passed a written or oral examination given by the school.

Section 3. (1) If a license is required, a track that permits an unlicensed person to officiate shall be fined an amount not exceeding \$250 for each day the unlicensed person officiates.

(2) An unlicensed person who officiates shall be fined an amount not to exceed \$250 for each day he officiates.

Section 4. Officials at Extended Meetings. (1) The following officials shall not serve at an extended pari-mutuel meeting without a valid commission license:

- (a) Presiding judge;
- (b) Associate judge;
- (c) Starter;
- (d) Race secretary;
- (e) Barrier judge;
- (f) Patrol judge;
- (g) Clerk of the course; or
- (h) Paddock judge.

(2) The holder of a pari-mutuel license may officiate at all meetings.

(3) At a pari-mutuel meeting, an official who acts as a judge shall not serve as a race secretary or clerk of the course.

(4) A licensed official shall not officiate at a pari-mutuel meeting if he is directly or indirectly the owner, or has a direct or indirect financial interest in a participating horse.

(5) A refusal to grant a license to a person may be reviewed by the commission.

Section 5. Disqualification to Act as Official. (1) A person shall be disqualified from acting in an official capacity in a race if he:

- (a) Is under suspension, expulsion, or other disqualification; or
  - (b) Has a bet on the race; or
  - (c) Has an interest in:
    - 1. A bet on the race; or
    - 2. A horse engaged in the race.
- (2)(a) If a person is disqualified, he shall notify the management.
- (b) The commission shall appoint a substitute.

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Section 6. Suspension or Revocation of Official's License. An official may be fined, suspended or removed for:

- (1) Incompetence;
- (2) Failure to follow or enforce administrative regulations; or
- (3) The consumption of alcohol within four (4) hours prior to the time he starts work as an official.

Section 7. Ban on Owning or Dealing in Horses. (1) An employee of a track whose duties include the classification of horses shall not, directly or indirectly:

- (a) Be the owner of a horse racing at a meeting; or
  - (b) Participate financially in the purchase or sale of a horse racing at a meeting.
- (2) A person who violates the provisions of this section shall be suspended.

Section 8. Location of Judge's Stand. (1) The judge's stand shall be located and constructed so as to afford an unobstructed view of the entire track.

(2) Nothing that would obscure or otherwise impede an official's vision of any portion of a track during a race shall be permitted on the track.

(3) A violation of the provisions of this section shall be:

- (a) Fined an amount not to exceed \$500; and
- (b) Immediately suspended.

Section 9. Judge's Stand Occupants. (1) From fifteen (15) minutes before the first race until fifteen (15) minutes after the last race, the occupants of the judge's stand shall be limited to the following:

- (a) Judges;
- (b) Clerk of the course;
- (c) Secretary;
- (d) Starter;
- (e) Timers;
- (f) Official announcer;
- (g) Runner who posts the photo finish;
- (h) Officials of the commission; and
- (i) Other persons specifically authorized by the presiding judge [commission].

(2) A track that violates the provisions of this section shall be fined an amount not to exceed \$300.

Section 10. Improper Acts by an Official. A judge or an official shall be suspended, expelled, or fined an amount not to exceed \$500, if he is guilty of:

- (1) A violation of:
  - (a) A statute for which a penalty is not provided by statute; or
  - (b) An administrative regulation governing harness racing; or
- (2) Uses insulting language or engages in other improper conduct.

Section 11. Presiding Judge. The presiding judge shall:

- (1) Supervise the persons specified in this subsection:
  - (a) Associate judges;
  - (b) Patrol judges;
  - (c) Starters;
  - (d) Paddock judges;
  - (e) Finish wire judge;
  - (f) Clerk of the course;
  - (g) Timers;
  - (h) Charters;
  - (i) Racing secretary;
  - (j) Official announcer; and
  - (k) Other licensed personnel directly responsible for conducting the racing program.
- (2) Notify owners, trainers, drivers and grooms of penalties imposed.
- (3) Submit a detailed written report to the commission of violations of the rules by a track, its officers or race officials.
- (4) Make other reports required by the commission.
- (5) Sign each sheet of the judge's book, verifying the correctness of the record.
- (6) Be responsible for the maintenance of the records of the meeting and forwarding them to the commission.

(7) If the presiding judge does not comply with the administrative regulations of the commission, he:

- (a) Shall be suspended; and
- (b) May be denied a license for the following year.

Section 12. Authority and Procedure of Judges. A presiding judge shall:

(1) Levy fines and penalties, as provided by applicable statute and administrative regulation.

(2) Determine questions of fact relating to the race.

(3) Decide any differences between parties to the race, or any contingent matter which shall arise, that are not otherwise provided for in this administrative regulation.

(4)(a) In case of fraud, declare pools and bets "off".

(b) An appeal from the decision of a presiding judge in a case of fraud shall not be permitted.

(c) A decision with respect to pools and bets shall be:

1. Made by the presiding judge at the conclusion of the race;
2. Based upon the:

- a. Observation of the presiding judge; and
- b. Facts determined upon immediate investigation.

(d) After the official placing at the conclusion of the heat or dash, a reversal or change of decision shall not affect the distribution of betting pools made on the official placing.

(e) If pools and bets are declared "off" for fraud, a party that is guilty of fraud shall be suspended and expelled.

(5)(a) Control the horses, drivers, and assistants.

(b) Punish drivers or assistants who fail to obey their orders or the provisions of administrative regulations, by:

1. A fine not exceeding \$100; or
2. Suspension; or
3. Expulsion.

(c) A presiding judge shall strictly enforce penalties prescribed by administrative regulations.

(d) A track shall not:

1. Rescind or modify a fine imposed by a presiding judge;
2. Review an order of suspension or expulsion; or
3. Interfere with a presiding judge with the performance of his duties.

(6)(a) Examine under oath all parties connected with a race as to any wrong or complaint.

(b) The judges may compel by written notice the appearance of any person whose testimony is necessary to the proper conduct of a hearing.

(c) Failure to attend shall be a violation of this administrative regulation and shall be penalized as provided in subsection (5) of this section.

(7) Consider complaints of foul only from the patrols, owners, trainers or drivers in the race.

(8) Make decisions in the public interest that are required by extraordinary circumstances not covered by administrative regulations of the commission.

(9) The judges shall declare a dash or heat of a race no contest if the track is thrown into darkness during the progress of a race because of a failure of electricity, or any unforeseen incident.

Section 13. Judges' Duties. A presiding judge shall exclude from the race a horse that in his opinion is improperly equipped, dangerous, or unfit to race, including sick, weak, and extremely lame horses.

(1)(a) A horse shall not race:

1. With a tube in its throat;
2. If it does not have unimpaired vision in at least (1) eye;
3. If it is infected with Equine Infectious Anemia, or is a carrier thereof.

(b) A horse that is a bleeder may race under recognized medication for the bleeding condition, if the:

1. Condition and medication is certified to the commission by the commission veterinarian, or a veterinarian licensed by the commission prior to the race; and

2. Horse is approved for racing by the presiding judge.

(c) Horses that bleed while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing vet-

erinarian. If the commission ~~and the practicing veterinarian~~ disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the judges of the commission or their designee. The opinion of the third veterinarian shall be delivered to the judges of the commission or their designee who shall make a final decision of the issue. ~~(If a horse bleeds while being raced under medication, it shall not race again, with or without medication, until it is cured and approved for racing by the commission.)~~

(2) A presiding judge shall investigate an:

(a) Apparent or possible interference, or other violation of 811 KAR 1:075, Section 1, whether or not a complaint has been made by a driver;

(b) Act of cruelty to a race horse that is seen by, or reported to, him by a member during a meeting at which he officiates;

(c) If a judge finds that an act of cruelty has been committed, he shall:

1. Suspend or fine the offender in an amount not to exceed \$500; and

2. Submit a written report of his findings and actions within ten (10) days to the commission;

(d) The chairman of the commission, or the designated representative of the commission:

1. Shall have the same authority conferred upon judges by the provisions of this subsection; and

2. May impose a penalty for an act of cruelty or neglect of a horse committed by a member, whether the act was performed on or off the premises of a race track;

(3)(a) A presiding judge shall conduct an investigation of an accident to determine its cause on the day of a race or immediately thereafter;

(b) At the time of an accident the:

1. Inquiry signed shall be posted; and

2. Race shall not be declared official until the presiding judge has conferred with the patrol judge;

(4) A presiding judge shall closely observe the performance of the drivers and the horses in order to ascertain if violations of 811 KAR 1:075 occur;

(5) A presiding judge shall exhaust all means to safeguard the contestants and the public.

Section 14. Hearing. (1) Before a penalty shall be imposed, a hearing at a designated time shall be granted.

(2)(a) All three (3) judges shall be present, if possible.

(b) At all judges' hearings, the presiding judge and at least one (1) associate judge shall be present.

(3)(a) The judges may impose the penalties prescribed by the administrative regulations of the commission.

(b) A penalty notice shall state:

1. The exact reason why the penalty is being imposed; and

2. A summary of the statute or administrative regulation that was violated.

(c) A penalty imposed on a driver may be reported on the reverse side of his driver's license by the presiding judge.

(4)(a) If a judge believes that a person has violated an administrative regulation or statute and has left the grounds and cannot be contacted, he shall:

1. Conduct an investigation; and

2. Send a detailed report to the commission.

(b) Based upon the judge's report, the commission may impose a penalty not to exceed ten (10) days without granting a hearing.

(c) A hearing shall be conducted prior to the imposition of a penalty in excess of ten (10) days.

(5)(a) A judge shall submit, in writing, to the commission, a list of witnesses questioned at a hearing, and their testimony.

(b) Testimony shall be recorded by:

1. Written, signed statement; or

2. Tape recorders; or

3. Court reporter's transcript.

(6)(a) The judges shall not make a decision until all witnesses called by the judges and the person who is the subject of a hearing have testified.

(b) Upon request, a person charged with a violation of a statute or administrative regulation shall be given until 12 p.m. of the following

day to prepare his defense.

Section 15. Judges' Procedure. The judges shall:

(1) Be in the stand:

(a) Fifteen (15) minutes before the race;

(b) For ten (10) minutes after the first race; and

(c) Whenever the horses are upon the track.

(2) Observe the preliminary warming up of horses and scoring, noting:

(a) Behavior of horses;

(b) Lameness;

(c) Equipment;

(d) Conduct of the drivers;

(e) Changes in odds at pari-mutuel meetings; and

(f) Unusual incidents pertaining to horses or drivers participating in races.

(3)(a) Have the bell rung, or give other notice, at least ten (10) minutes before the race or heat. The judges may punish a driver who fails to obey this summons by:

1. A fine not to exceed \$100; and

2. Having his horse ruled out and considered drawn.

(4)(a) Designate one (1) of themselves to lock the pari-mutuel machines immediately upon the horse reaching the official starting point.

(b) The presiding judge shall:

1. Designate the post time for each race; and

2. Call the horses at a time sufficient to preclude excessive delay after the completion of two (2) scores.

(5)(a) Be in communication with the patrol judges, by use of patrol phones, from the time the starter picks up the horses until the finish of the race.

(b) A patrol judge who witnesses a violation of statute or administrative regulation shall:

1. Report the violation; and

2. Submit a written report on the violation.

(c) At least one (1) judge shall observe the drivers throughout the stretch, and specifically note:

1. Changing course;

2. Interference;

3. Improper use of whips;

4. Breaks; and

5. Failure to contest the race to the finish.

(6) Display the photo sign:

(a) If:

1. The order of finish among the contending horses is less than a half-length; or

2. A contending horse is on a break at the finish; and

(b) After the photo:

1. The photo has been examined;

2. A decision made;

3. Checked by the presiding judge; and

4. Posted for public inspection.

(7) The judges shall decide the order of finish if:

(a) The photo finish camera suffers electrical or mechanical failure; or

(b) A distorted, deceptive, or otherwise inadequate picture is developed.

(8)(a) A horse shall be examined by the state veterinarian if it falls, runs loose and uncontrolled:

1. During warm up;

2. Prior to the race; or

3. Going to the post.

(b) If the state veterinarian determines that the horse is unfit, the presiding judge shall order the horse scratched.

Section 16. Patrol Judges. (1) At the discretion of the judges, patrol judges may be appointed by the track.

(2) Appointment of patrol judges shall require the approval of the presiding judge.

(3) Patrol judges shall be supervised by the presiding judge.

(4)(a) At least two (2) patrol judges shall be employed at:

1. Extended pari-mutuel meetings; and

2. Other meetings conducting one (1) or more races with a purse value of \$5,000 or more.

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(b) If there is a patrol car, only one (1) patrol judge shall be required.

(5) Patrol judges shall phone or go the judge's stand to report fouls and other improper conduct.

(6) The result of a heat or dash shall not be announced until the reports of the patrols have been received.

Section 17. Incapacitated Official. (1)(a) In cases of unavoidable emergency, such as the absence or incapacitation of a licensed official, the track management shall appoint a substitute official.

(b) The appointment of a substitute official shall require approval by the commission.

(2) If a substitute official serves for more than three (3) days, he shall apply to the commission for a license.

Section 18. "Starter." (1) Subject to the approval of the commission, the starter shall be:

(a) Designated by the track; and

(b) Licensed as a starter by the commission.

(2) The starter shall be in the stand or starting gate fifteen (15) minutes before the first race.

(3) The starter shall have control over the horses.

(4)(a) From the formation of the parade until the word "go" is given, the starter may assess fines and suspend drivers for a violation of statute or administrative regulation.

(b) He shall notify the judges and the drivers of penalties imposed by him.

(5) If requested by the judges, he may assist in placing the horses.

~~(6) An assistant starter shall be available at all times.~~

Section 19. Clerk Duties; Clerk of the Course. The clerk of the course shall:

(1) At request of judges assist in drawing positions.

(2) Keep the judge's book and record therein:

(a) All horses entered and their eligibility certificate numbers.

(b) Names of owners, and drivers and drivers' license numbers.

(c) The charter lines at pari-mutuel meetings.

(d) At all race meetings, the money won by the horse at that track.

(e) Note drawn or ruled out horses.

(f) Record time in minutes, seconds, and fifths of seconds.

(g) Check eligibility certificates before the race.

(h) After the race enter all information provided for thereon, including the horse's position in the race if it was charted.

(i) Verify the correctness of the judge's book, including race time, placing and money winnings, and reasons for disqualification, if any.

(j) Verify that the book is properly signed.

(k) Forward the judge's book charts and marked programs to the commission from all extended pari-mutuel meetings the day following each racing day.

(l) Notify owners and drivers of penalties assessed by the officials.

(3) Upon request assist judges in placing horses.

(4) After the race, return the eligibility certificate to the owner of the horse or his representative when requested.

Section 20. Timers. (1) If an electronic or electric timing device is used, it shall be a device approved by the commission.

(2) All time shall be announced and recorded in fifths of seconds.

(3)(a) If an electronic or electric timing device is used, there shall be one (1) timer in the judge's or timer's stand.

(b) If an electronic or electric timing device is not used, there shall be three (3) timers in the judge's or timer's stand.

(4) The chief timer shall verify the correctness of the record by signing the judge's book for each race.

(5) ~~(2)~~(a) The timers shall be in the stand fifteen (15) minutes before the first heat or dash is to be contested.

(b) They shall start their watches when the first horse leaves the point from which the distance of the race is measured.

(c) The time of the leading horse at the quarter, half, three-quarters, and the finish shall be taken.

(d) If odd distances are raced, the fractions shall be noted accordingly.

Section 21. Paddock Judge. (1) Under the direction and supervi-

sion of the presiding judge, the paddock judge shall be in complete charge of paddock activities as specified in 811 KAR 1:010, Section 10.

(2) The paddock judge shall be subject to the approval of this commission.

(3) The paddock judge shall be responsible for:

(a) Getting the fields on the track for post parades in accordance with the schedule given to him by the presiding judge;

(b) Inspection of horses for changes in equipment, broken or faulty equipment, head numbers or saddle pads;

(c) Supervision of paddock gate men; and

(d) Proper check in and check out of horses and drivers. Check the identification of all horses coming into the paddock including the tattoo number.

(4) The presiding judge shall:

(a) Be the director of the activities of the paddock farrier;

(b) Immediately notify the presiding judge of anything that could in any way change, delay, or otherwise affect the racing program;

(c) Report to the presiding judge cruelty to a horse that he has observed;

(d) Insure that only properly authorized persons are permitted in the paddock;

(e) Notify the presiding judge of a change of racing equipment or shoes before the race;

(f) Inspect and supervise the maintenance of emergency equipment kept in the paddock; and

(g) Notify judges of trainers and groomers who leave the paddock in an emergency.

Section 22. Identifier. (1) At all extended pari-mutuel meetings an association shall employ an identifier licensed by the commission and United States Trotting Association.

(2) The identifier shall:

(a) Check the identification of all horses coming into the paddock, including the tattoo number, color, and any markings;

(b) Be under the immediate supervision of the paddock judge, and the general supervision of the presiding judge.

(3)(a) The identifier shall immediately report to the paddock judge a discrepancy that is detected in the tattoo number or freeze brand, color, or markings of a horse.

(b) The paddock judge shall immediately notify the presiding judge of the discrepancy.

Section 23. Program Director. (1) Subject to the approval of the commission, each extended pari-mutuel track shall designate a program director.

(2) A person shall be permitted to act as a program director if he demonstrates he is capable of furnishing accurate and complete past performance information to the general public.

(3) The program director shall furnish accurate and complete past performance information to the general public.

Section 24. Duties of Patrol Judges. (1) The patrol judges shall observe all activity on the race track in their area at all times during the racing program.

(2) They shall immediately report to the presiding judge:

(a) Any action on the track which could improperly affect the result of a race.

(b) Every violation of the statutes and administrative regulations governing racing.

(c) Every violation of the rules of decorum.

(d) The lameness or unfitness of any horse.

(e) Any lack of proper racing equipment.

(3) The patrol judges shall:

(a) Be in constant communication with the judges during the course of every race;

(b) Immediately advise the judges of every rule violation, improper act or unusual happening which occurs at their station.

(c) Submit individual daily reports of their observations of the racing to the presiding judge; and

(d) When directed by the presiding judge, attend hearings or inquiries on violations and testify thereat under oath.



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Section 25. Licensed Charter. (1) At all extended pari-mutuel meetings and grand circuit meetings, races shall be charted by a licensed charter hired by the track.

(2) The charter shall be subject to the approval of this commission, and shall be licensed by the United States Trotting Association.

Section 26. (1) Equipment changes shall be cleared through the paddock judge.

(2) The paddock shall call the judges to obtain permission for equipment changes.

Section 27. Duties of the Race Secretary. The race secretary of each association shall be licensed and approved by the commission. The race secretary shall:

(1) Receive and safeguard the eligibility certificates of all horses competing at the race track, or stabled on grounds owned or cared for by an association and to return them to the owner of a horse or his representative upon its departure from the grounds.

(2) Be familiar with the age, class, and competitive ability of horses racing at the track.

(3) Classify and reclassify horses in accordance with the provisions of applicable administrative regulations.

(4) List horses in the categories for which they qualify, and insure that the lists are current and properly displayed in the room in which the declaration box is located for examination by horsemen and others.

(5) Provide for the listing of horses in the daily program.

(6) Verify the information contained in entry blanks and declarations.

(7) Select the horses to start and the also eligible horses from the declarations in accordance with the provisions of applicable administrative regulations.

(8) Examine nominations and declarations in early closing events, late closing and stake events, to verify the eligibility of all declarations and nominations and to compile lists of them for publication.

Section 28. Commission Supervisors of Pari-mutuel Betting. (1) The commission shall employ supervisors with accounting experience.

(2) Supervisors shall ascertain whether the proper amounts have been paid from pari-mutuel pools to the betting public, the association, and the Commonwealth, by checking, auditing and filing with the commission verified reports.

(3) The reports shall account for daily pari-mutuel handle distribution and attendance for each preceding racing day.

(4) A final report shall be filed at the conclusion of each race meeting in the Commonwealth.

(5) The daily report shall show for each race:

(a) Number of horses started;

(b) Number of betting interests;

(c) Total money wagered in each betting pool;

(d) Refunds, if any, for each day;

(e) The sum of all betting pools, and total refunds;

(f) Total pari-mutuel handle for the comparable racing day for the preceding year;

(g) Cumulative total and daily average pari-mutuel handle for the race meeting;

(h) Amount of state pari-mutuel tax due;

(i) Taxable admissions, tax exempt admissions, total admissions;

(j) Temperature, weather and track conditions;

(k) Post time of first race;

(l) Program purses, distance and conditions of each race; and

(m) Any minus pools resulting with explanation.

(6) Within thirty (30) days after the close of a race meeting, the commission supervisors of pari-mutuel shall submit to the commission a final verified report providing a summary recapitulation of the daily reports for each race meeting.

(7) The commission supervisors of pari-mutuel betting or their representative shall have access to all association books, records, and pari-mutuel equipment.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the administrative regulation does: This administrative regulation sets forth the required standardbred race officials, their duties, and functions.

(b) The necessity of the administrative regulation: To help regulate the conditions under which standardbred racing shall be conducted in Kentucky.

(c) How the administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines the duties for standardbred race officials which in turn help maintain integrity and honesty in standardbred racing.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: The commission for the purposed of maintaining integrity and honesty in racing shall prescribe by administrative regulations the powers and duties of the persons employed.

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

(a) How the amendment will change the existing administrative regulation: The amendment will give the judges more defined guidelines governing horses that are bleeders.

(b) The necessity of the amendment of the administrative regulation: It will give a more precise definition of a bleeder.

(c) How the amendment conforms to the content of the authorizing statutes: According to KRS 230.260(3), the commission has full authority to prescribe necessary and reasonable administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: It will redefine the language of a bleeder being placed on and removed from the veterinarian's list.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The only people affected will be the veterinarians and the horses that are bleeders.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. Horses that bleed while on a bleeder medication shall be placed on the veterinarian's list and shall remain until removed by the commission veterinarian after consultation with the practicing veterinarian.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation

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establishes any fees or directly or indirectly increases any fees: This administrative regulation will not increase any license fees.

(9) TIERING: Is tiering applied? Tiering was not applied. The amendments proposed deal only with horses being placed on a bleeders list.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

#### 811 KAR 1:020. Registration and identification of horses.

RELATES TO: KRS 230.215(2), 230.260(1), (2), (3) [230.630(1), (2), (3), 230.640(2)]

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the registration, ownership, identification and information concerning horses.

Section 1. Registration. All matters relating to registration of standardbred horses shall be governed by the rules of the United States Trotting Association.

Section 2. Bona Fide Owner or Lessee. Horses not under lease must race in the name of the bona fide owner. Horses under lease must race in the name of the lessee and a copy of the lease must be recorded with the Kentucky Racing Commission. Persons violating this rule may be fined, suspended or expelled.

Section 3. Program Information. (1) A printed program shall be available to the public at all meetings where purses are raced for. All programs shall furnish:

- (a) Horse's name and sex.
- (b) Color and age.
- (c) Sire and dam.
- (d) Owner's name.
- (e) Driver's name and colors.
- (f) Age and weight.

(2) At extended pari-mutuel meetings the following additional information shall be furnished.

(a) In claiming races the price for which the horse is entered to be claimed must be indicated.

(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include: date of race, place, size of track if other than a half-mile track, symbol for free-legged pacers, track condition, type of race, distance, the fractional times of the leading horse including race time, post position, position of one quarter (1/4), one half (1/2), three quarters (3/4), stretch with lengths behind leader, finish with lengths behind leader, individual time of the horse, closing dollar odds, name of the driver, names of the horses placed first, second and third by the judges. The standard symbols for breaks and park-outs shall be used, where applicable.

(c) Indicate drivers racing with a provisional license.

(d) Indicate pacers that are racing without hobbles.

(e) Indicate trotters that are racing with hobbles.

(f) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.

(g) [(f)] The name of the trainer.

(h) [(g)] The consolidated line shall carry date, place, time, driver, finish, track condition and distance, if race is not at one (1) mile.

(i) [(h)] All horses drawn into an early closer, a late closer, stake or futurity shall be listed on the official program.

Explanation:

Early closer - a race in which entries close at least six (6) weeks preceding the race.

Late closer - a race in which entries close less than six (6) weeks and more than three (3) days before the race is contested.

Futurity - a stake in which the dam of the competing animal is nominated.

Stake - a race which will be contested in a year subsequent to its

closing.

Section 4. Failure to Furnish Reliable Program Information. May subject the track and/or program director to a fine not to exceed \$500 and the track and/or the program director may be suspended until arrangements are made to provide reliable program information.

Section 5. Inaccurate Information. Owners, drivers, or others found guilty of providing inaccurate information on a horse's performance, or of attempting to have misleading information given on a program may be fined, suspended or expelled.

Section 6. Check on Identity of Horse. Any track official, member of the Kentucky Racing Commission or their agent, or owner, trainer or driver of any horse declared into a race wherein the question arises may call for information concerning the identity and eligibility of any horse on the grounds of a track, and may demand an opportunity to examine such horse with a view to establishing his identity or eligibility. If the owner or party controlling such horse shall refuse to afford such information, or to allow such examination, or fail to give satisfactory identification, the horse and the said owner or party may be barred and suspended or expelled.

Section 7. Frivolous Demand for Identification. Any person demanding the identification of a horse without cause or merely with the intent to embarrass a race, shall be punished by a fine not exceeding \$100 or by suspension or expulsion.

Section 8. Tattoo/Freeze Brand Requirements. No horse will be permitted to start at an extended pari-mutuel meeting that has not been tattooed or freeze branded unless the permission of the presiding judge is obtained and arrangements are made to have the horse tattooed or freeze branded. Any person refusing to allow a horse to be tattooed or freeze branded may be fined, suspended or expelled.

Section 9. False Chart Lines. Any official, clerk, or person who enters a chart line on an eligibility certificate when the race has not been chartered by a licensed charter may be fined, suspended or expelled.

Section 10. Withholding Registration or Eligibility Certificate. Any person withholding an eligibility or registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, may be suspended until such time as the certificate is returned.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the administrative regulation does: This regulation pro-

vides for the registration, ownership, identification, and information concerning horses.

(b) The necessity of the administrative regulation: This regulation helps to regulate conditions under which standardbred racing is conducted.

(c) How the administrative regulation conforms to the content of the authorizing statutes: The commission shall have full authority to prescribe necessary and reasonable rules, regulations, and conditions under which a horse race meeting shall be conducted.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: Regulations dealing with the registration and identification of horses helps with the honesty and integrity of racing.

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

(a) How the amendment will change the existing administrative regulation: The amendment will have all trotters that are racing with hoppers to be indicated in the racing program.

(b) The necessity of the amendment of the administrative regulation: This amendment will aid the betting public when they're handicapping races.

(c) How the amendment conforms to the content of the authorizing statutes: The function of this administrative regulation is to provide information concerning the horses.

(d) How the amendment will assist in the effective administration of the statutes: Having the trotters that are racing in hoppers indicated in the racing program will aid the betting public when they're handicapping races which helps with the honesty and integrity of racing.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The only affected entities would be the betting public.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. Indication of trotters wearing hoppers in the racing program would aid the betting public in their handicapping.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not affected by this amendment.

(9) TIERING: Is tiering applied? Tiering was not applied. This amendment only deals with trotters racing with hoppers to be indicated in the racing program.

# PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

## 811 KAR 1:055. Declaration to start; drawing horses.

RELATES TO: KRS 230.215, 230.260(1), (3) [230.630(1)], (3), 230.640]

STATUTORY AUTHORITY: KRS 230.260(3), (6) [230.630(3)], (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate declarations to start and drawing horses.

Section 1. Declaration. (1)(a) Extended pari-mutuel meetings. The declaration time shall be 9 a.m., unless:

1. Otherwise specified in the conditions; or
2. Approved in writing by the commission three (3) days prior to the day of the race.

(b) Other meetings. If another time is not specified in the conditions, starters shall be declared in at 10 a.m.

(2) A horse shall not be declared to start in more than one (1) race on a racing day.

(3) Time used. The time when declarations close shall be:

(a) For extended pari-mutuel meetings, the time in use at the meeting; and

(b) For other meetings, standard time.

(4) Declaration box. The management shall provide a locked box with an aperture through which declarations shall be deposited.

(5) Responsibility for declaration box. The presiding judge shall be in charge of the declaration box.

(6) Search for declarations by presiding judge before opening box. Prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the presiding judge shall:

(a) Check with the race secretary to ascertain if any declarations by mail, telegraph, or otherwise, are in the office and not deposited in the entry box; and

(b) see that they are declared and drawn in the proper event.

(7) Opening of declaration box. At the time specified the presiding judge shall unlock the box, assort the declarations found therein, and ~~delivered to the race secretary [immediately draw the positions in the presence of such owners or their representatives, as may appear].~~

(8) Entry box and drawing of horses at extended pari-mutuel meetings.

(a) The entry box shall be opened by the presiding judge at the advertised time.

(b) The presiding judge shall ensure that at least one (1) horseman or an official representative of the horseman is present. An owner or agent for a horse with a declaration in the entry box shall not be denied the privilege of being present.

(c) Under the supervision of the presiding judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn.

(d) If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(9) Drawing of post positions for second heat in races of more than one (1) dash or heat at pari-mutuel meetings. In races of a duration of more than one (1) dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

(10) Declarations by mail, telegraph or telephone.

(a) Declarations by mail, telegraph, or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. The drawings shall be final.

(b) Mail, telephone and telegraph declarations shall state the:

1. Name and address of the owner or lessee;
2. Name, color, sex, sire and dam of the horse;
3. Name of the driver and his colors;
4. Date and place of last start;
5. Current summary, including the number of starts, first, seconds, thirds, earnings and best winning time for the current year; and
6. Event or events in which the horse is to be entered.

(11) Effect of failure to declare on time. If a track requires a horse to be declared at a stated time, failure to declare shall be considered a withdrawal from the event.

(12) Drawings of horses after declaration.

(a) After declaration to start has been made, a horse shall not be drawn without permission of the judges.

(b) Any horse eligible to start in a second, third, or fourth heat of a race shall not be drawn without the permission of the judges.

(c) A fine, not to exceed \$500, or suspension, may be imposed for drawing a horse without permission.

(d) The penalty shall be assessed to both the horse and the party who violates the administrative regulation.

(13) Horses omitted through error.

(a) Except as provided in this subsection, a drawing shall be final.

(b) If there is conclusive evidence that a horse, properly declared other than by telephone, was omitted from the race through error of a track, its agent or employee, the horse may be added to the race and given the outside post position.

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(c) For pari-mutuel meetings, the provisions of this subsection shall apply if the error is discovered prior to the publication of the official program.

Section 2. Qualifying Races. At extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

(1)(a) Within thirty (30) days [~~two (2) weeks~~] of being declared in, a horse that has not raced previously at the gait chosen shall:

1. Go a qualifying race under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings; and

2. Acquire at least one (1) charted line by a licensed charter.

(b) Time and beaten lengths shall be determined by a standard photo finish.

(2)(a) The provisions of subsection (1) of this section shall apply to a horse that does not show a charted line for:

1. The previous season; or

2. Within its last six (6) starts.

(b) Uncharted races contested in heats, of more than one (1) dash, and consolidate according to subsection (4) of this section shall be considered one (1) start.

(3)(a) The provisions of subsection (2) of this section shall not apply if a horse:

1. Has raced at a charted meeting during the current season; and

2. Gone to meetings at which the races are not charted.

(b) The information from the uncharted races may be:

1. Summarized, including each start; and

2. Consolidated in favor of charted lines.

(4) If the race is not at least one (1) mile, the consolidated line shall carry date, place, time, driver, finish, track condition and distance.

(5)(a) The judges may require a horse that has been on the steward's list to go a qualifying race.

(b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, he may be required to go a qualifying race.

(6)(a) Except as provided by paragraph (b) of this subsection, if adequate competition is not available for a qualifying race, the judges may permit a fast horse to qualify by a timed workout that is consistent with the time of the races in which the horse will compete.

(b) A horse shall qualify in a qualifying race if it is on the steward's list for:

1. Breaks; or

2. Refusing to come to the gate.

(7) Qualifying races shall be:

(a) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more; and

(b) Scheduled twice a week through the last week of the meeting.

(8)(a) A race to qualify drivers and horse shall be charted, timed and recorded.

(b) A race to qualify only drivers shall not be required to be charted, timed and recorded.

(9)(a) Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefaced with the letter "Q".

(b)1. The record shall not be prefaced with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.

2. The presiding judge shall report the test on the judge's sheet.

(10) Before it is permitted to start in a race with pari-mutuel wagering, a horse that fails to race at a charted meeting within thirty (30) days after having started shall:

(a) Start in a charted race, or a qualifying race; and

(b) Meet the standards of the meeting.

Section 3. Coupled Entries. (1)(a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled as an "entry" if they are:

1. Owned or trained by the same person; or

2. Trained in the same stable by the same management.

(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the "entry".

(2)(a) If a trainer enters two (2) or more horses, under bona fide separate ownerships or the same ownership, in the events specified in

paragraph (b) of this subsection, the horses may race as separate betting entries if:

1. The association has requested they be permitted to race as separate betting entries; and

2. The judges approve the request.

(b) The events to which the provisions of this subsection apply shall be a stake, early closing, futurity, free-for-all, or other special event.

(c) The fact that the horses are trained by the same person shall be stated prominently in the program.

(d) If the race is split in two (2) or more divisions:

1. Horses in an "entry" shall be seeded insofar as possible, in the following order, by:

a. Owners;

b. Trainers;

c. Stables.

(e) The divisions in which they compete and their post positions shall be drawn by lot.

(f) Elimination heats also shall be governed by the provisions of paragraphs (d) and (e) of this subsection.

(3) The presiding judge shall be responsible for coupling horses.

(4)(a) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-mutuel wagering.

(b) If this occurs, entries shall not be rejected.

(5) If an owner, lessor, or lessee, has a vested interest in another horse in the same race, it shall constitute an entry.

Section 4. Also Eligibles. Not more than two (2) horses may be drawn as also eligibles for a race.

(2) Their positions shall be drawn along with the starters in the race.

(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:

(a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;

(b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; and

(c) In other races, take the post position drawn by the horse it replaces.

(4) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.

(5)(a) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.

(b) The owner or trainer of such a horse shall be notified that the horse is to race.

(c) The horse shall be posted at the race secretary's office.

(6) Horses on the also eligible list that are not moved into race by 9 a.m. on the day of the race shall be released.

Section 5. Preference. (1)(a) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year.

(b) The preference date on a horse that has drawn to race and been scratched is the date of the race from which he was scratched.

(2) If a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date, and preference shall be applied accordingly.

(3)(a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.

(b) If a preference date error has occurred, the race shall be redrawn.

Section 6. Steward's List. (1)(a) A horse may be placed on a steward's list by the presiding judge if it is unfit to race because it is:

1. Dangerous;

2. Unmanageable;

3. Sick;

4. Lame; or

5. Unable to show a performance to qualify for races at the meeting.

(b) The owner or trainer shall be notified in writing of this action, and the specific item listed in paragraph (a) of this subsection upon which the action is based.

(c) Declaration on a horse placed on a steward's list shall be refused.

(d) If a horse is placed on a steward's list, the clerk of the course shall make a note on the eligibility certificate of the horse stating the:

1. Date it was placed on the steward's list;
2. The reason it was placed on the steward's list; and
3. If the horse has been removed from the steward's list, the date of its removal.

(2)(a) A presiding judge or other official at a nonextended meeting shall not remove from the steward's list and accept as an entry a horse that:

1. Had been placed on a steward's list; and
2. Because he is a dangerous or unmanageable horse, has not been removed from the steward's list.

(b) A nonextended meeting may refuse declarations on a horse that has been placed on a steward's list and not removed therefrom.

(3) A horse scratched from a race because of lameness or sickness shall not enter another race for at least three (3) days from the date of the race from which the horse was scratched.

Section 7. Driver. (1) Declarations shall state who shall drive the horse and give the driver's colors.

(2) A driver shall not be changed after 9 a.m. of the day preceding the race, without the permission of the judges and a showing of good cause.

(3) If a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers.

Section 8. (1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting for the election of a horseman and an alternate to represent them on matters relating to the withdrawal of horses due to bad track or weather conditions.

(2)(a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of a committee consisting of an agent of the track member, the elected representative of the horsemen and himself.

(b) Upon unanimous decision by the committee that track conditions are safe for racing, unpermitted withdrawals shall not be made.

(3)(a) An entrant may scratch his horse if:

1. A decision by the committee is not unanimous; and
2. He has posted ten (10) percent of the purse to be raced for.

(b) If sufficient withdrawals are received to cause the field to be less than six (6), the track member shall have the right to postpone an early closing event or stake and cancel an overnight event.

(4)(a) The money posted pursuant to subsection (4) of this section shall be forwarded to the commission.

(b) The commission shall determine whether a withdrawal was for good cause.

(c) The money shall be:

1. Retained as a fine, if the commission determines that the withdrawal was not for good cause; or
2. Refunded, if the commission determines that the withdrawal was for good cause.

(5) The procedures established by this section govern only the withdrawal of horses that have been properly declared in and does not relate to postponement which is covered in 811 KAR 1:060.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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 can-

celed. 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

## REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the administrative regulation does. The function of this regulation is to regulate declarations to start and drawing horses.

(b) The necessity of the administrative regulation: This regulation regulates the conditions under which harness racing is conducted.

(c) How the administrative regulation conforms to the content of the authorizing statutes: It gives the commission full authority to prescribe the regulations and conditions under which racing shall be conducted.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidelines for horses declaring in for a race and the conditions for various races.

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

(a) How the amendment will change the existing administrative regulation: The amendment shall have all declarations delivered to the race secretary. It also will amend the time for a horse being declared in for a qualifying race.

(b) The necessity of the amendment of the administrative regulation: These proposed amended changes are needed to conform with the United States Trotting Association and all other pari-mutuel states.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation regulates declarations to start and drawing horses for races.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.260(3) gives the commission full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The only entities affected would be horses racing in qualifying races.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. Qualifying races will be scheduled twice a week through the last week of the race meet as needed. Changing of the 2 weeks to 30 days for qualifying horses being declared in is already being observed by all horses racing at pari-mutuel race tracks in the United States.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Proposed amended changes in this administrative regulation will not increase any fees.

(9) Tiering: Is tiering applied. Tiering was not applied. These proposed administrative changes only deal with declaration papers being delivered to the race secretary and changing of the time period for

horses being declared in.

**PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Racing Commission  
(Amendment)**

**811 KAR 1:090. Stimulants and drugs.**

RELATES TO: KRS 230.215, 230.260(1), (3), 230.310  
[230.630(1), (3), 230.640, 230.700]

STATUTORY AUTHORITY: KRS 230.260(3), (6) ~~[230.630(3), (4), (7)]~~

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. (1) Except as provided herein, at every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of:

- (a) Medication [Drug];
- (b) Stimulant;
- (c) Sedative;
- (d) Depressant; ~~[or]~~
- (e) Local anesthetic; or
- (f) Any foreign substance except as provided by this administrative regulation [Medicine].

- (2) The tests shall be conducted on the:
  - (a) ~~winning horse in every heat and race;~~
  - (b) ~~Winning horse and second place horse in every perfecta or quinella race;~~
  - (c) ~~Winning horse, or the second and third place horses in a triecta, or each of them.~~

- (3) The judges may order a horse in a race to be subjected to a urine test, or blood test, or both.

- (4) Testing shall be performed by a laboratory designated by the commission. [The winning horse and second place horse in every heat or dash of a race at a track with a total purse in excess of \$5,000 may be subjected to a blood test, or a urine test, or both tests.]

- (5) [A test shall be made by a qualified veterinarian and by a laboratory designated by the commission.]

- (6)(a) A positive test during a time trial shall be treated as a violation.

- (b) The winning time shall be disallowed, and the trainer of record shall be:

- 1. Fined; or
- 2. Suspended; or
- 3. Fined and suspended.

- (7) ~~In its discretion, or at the request of a member, the commission may authorize or require a blood test, or urine test, or other test of a horse racing at a meeting.]~~

Section 2. (1)(a) When a blood or urine sample is taken by a veterinarian, the owner, trainer or authorized agent shall be present.

- (b) A sample shall be:

- 1. Placed in two (2) containers and designated as the "primary" and "secondary" samples. [;]

- 2. Immediately sealed, with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only.

- (c) After both portions of the samples have been identified as provided in paragraph (b)1 of this subsection, the "primary sample" shall be delivered to the commission chemist's laboratory.

- (d) The "secondary sample" shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature as the primary sample. [the signature of the representative of the owner or trainer on the container.]

- (e) One (1) part of the sample shall be placed in a depository under the supervision of the presiding judge or other agency designated by the commission to be safeguarded until the report on the chemical

analysis of the other portion of the split sample has been received.]

- (2) If a positive report has been received, an owner or trainer may request the commission to have the other portion of the split sample:

- (a) ~~[inserted with a subsequent group sent for testing; or~~
- (b) ~~Sent to another chemist for analysis, the cost of which shall be paid by the owner or trainer.~~

- (b) A list of referee labs shall be provided by the commission veterinarian or the presiding judge.

- (c) The cost of the shipping shall be paid by the Kentucky Racing Commission.

Section 3. (1) If there is a positive test finding the presence of a medication [drug], stimulant, sedative, [or] depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation in the postrace test, the:

- (a) ~~laboratory shall immediately notify the presiding judge or commission veterinarian, who will notify the presiding judge. [; and~~

- (b) ~~Presiding judge shall immediately report the finding to the commission.]~~

- (2) If a positive report is received from the laboratory by the presiding judge:

- (a) The person held responsible shall be notified; and
- (b) A thorough investigation shall be conducted by or on behalf of the judges.

- (3)(a) A time shall be set by the judges for a hearing to dispose of the matter.

- (b) ~~[The time set for the hearing shall not exceed four (4) racing days after the responsible person was notified.]~~

- (c) ~~The hearing shall be continued if the judges determine that circumstances justify a continuance.~~

- (4) If the chemical analysis of blood, urine, or other sample of the postrace test taken from a horse indicates the presence of a medication [forbidden narcotic], stimulant, sedative, depressant, [or] local anesthetic, or any foreign substance except as provided by this administrative regulation, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.

- (5) ~~Upon receipt of written notification of a positive test finding, the judges shall immediately suspend the horse from further participation in racing.]~~

Section 4. (1) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in Section 1(1)(a), (b), (c), (d), (e), (f) of this administrative regulation, except as provided for in this administrative regulation.

- (2) No substance, foreign or otherwise, shall be administered within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this administrative regulation to a horse entered to race by:

- (a) Injection;
- (b) Intravenous administration;
- (c) Dose syringe;
- (d) Oral administration;
- (e) Nasal gastric tube;
- (f) Rectal infusion or suppository;
- (g) Inhalation; or
- (h) Any other means.

- (3) The prohibitions in this section include, but are not limited to injection or intravenous administration of vitamins, electrolyte solutions, and amino acid solutions.

- (4) A person who administers, influences, or conspires with another person to administer to a horse a medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation within twenty-four (24) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 of this administrative regulation. [A person who administers, influences, or conspires with another person to administer to a horse a drug, medicament, stimulant, depressant, narcotic, or hypnotic within forty-eight (48) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 16 of this administrative regulation.]

Section 5. If the postrace test or tests prescribed in Section 1 of this administrative regulation disclose the presence in a horse of a



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medication [drug], stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation [sedative], in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse with the intent to affect the:

- (1) Speed or condition of the horse; and
- (2) Result of the race in which it participated.

Section 6. A horse shall not be tubbed in ice in the paddock prior to its racing commitment.

Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.

(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a medication [drug], stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation [medicine or other substance that could result in a positive test].

(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a medication [drug], stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation. [or other substance that could result in a postrace positive test.]

Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:

- (a) Required by the provisions of this administrative regulations; or
- (b) Ordered by the judges.

(2) ~~[The owner, trainer, driver, or agent of the owner of a horse that refuses to submit to a prerace blood test shall be required to submit the horse to a postrace blood test, or urine test, or both tests regardless of its finish.]~~

(3) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse who refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 16 of this administrative regulation.

Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.

(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:

- (a) Forfeited; and

(b) Paid over to the trace where the infraction occurred [commission] for redistribution among the remaining horses in the race entitled to them.

(3) A forfeiture and redistribution of winnings shall not effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 10. Blood Gas Testing. (1) Testing procedure.

(a) No advance announcement of program testing by blood gas analyzer will be made.

(b) Announcement for selected races or selected horses shall be made by the judges at the appropriate time and location.

(c) The judges shall make the necessary selections of test subjects at its discretion.

(d) Each horse entered to compete in a race shall be made available upon entering the paddock for the purpose of having a blood sample drawn by the commission veterinarian or blood gas technician.

(e) Failure to report within the prescribed time or refusal by a horseman to present a selected horse under his care, custody or control for the blood gas analyzer testing shall result in an automatic scratch of the horse from the racing program, and shall be subject to the penalties provided in Section 16 of this administrative regulation.

(f) The commission veterinarian or blood gas technician shall document the name of the trainer or party who failed to report for

testing or refused to have blood drawn from the horse, and shall file a report with the judges.

(2) Test documentation.

(a) The commission veterinarian or blood gas technician shall be responsible for documenting every aspect of the blood gas analyzer test procedure.

(b) The blood gas analyzer shall be calibrated by the commission veterinarian or blood gas technician prior to the program testing.

(c) The blood gas analyzer shall be properly maintained and secured during any absence of the commission veterinarian or blood gas technician.

(d) At the conclusion of testing the commission veterinarian or blood gas technician will secure documentation of testing at the commission field office.

(3) Sample handling.

(a) The blood samples shall be tested by the commission veterinarian or blood gas technician and the results of said test shall be recorded by the commission veterinarian or blood gas technician.

(b) In the event the testing of a horse shows the total dioxide (TCO2) level at thirty-seven (37) millimoles per liter or higher for non-lasix horses and a total carbon dioxide (TCO2) of thirty-nine (39) millimoles per liter or higher for lasix horses.

1. The trainer or licensed designee and the presiding judge shall be notified immediately by the commission veterinarian or blood gas technician and the horse in question shall be expeditiously retested by the same procedure.

2. The blood gas analyzer testing will be observed by the trainer of the horse or his designee, and when possible the commission veterinarian.

3. A second excessive level of total carbon dioxide (TCO2), as defined by this paragraph shall be deemed a positive test and the judges shall be immediately notified and the horse scratched.

(c) It is the responsibility of the commission veterinarian or blood gas technician to identify properly each horse and label blood tube accordingly prior to taking any blood samples for the blood gas analyzer test.

(4) Sanctions.

(a) The trainer or responsible party shall receive a warning for the first violation of this administrative regulation.

(b) No ruling shall be issued for the first violation of this administrative regulation.

(c) All violations thereafter the trainer of said horse shall be subject to the penalties provided in Section 16 of the administrative regulation. [Prerace Blood Test. If there is a prerace blood test that shows that there is an element present in the blood indicative of a stimulant, depressant, or unapproved medicament, the:

(1) Horse shall immediately be scratched from the race; and

(2) Officials shall conduct an investigation to determine if Section 5 of this administrative regulation was violated.]

Section 11. Hypodermic Syringe Prohibited. (1) Except for a licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a medication [drug], stimulant, sedative, depressant, local anesthetic, or any foreign substance except as provided by this administrative regulation [or narcotic]:

(a) Within the grounds of a licensed harness race track; or

(b) In or upon the premises which he occupies, or has a right to occupy; or

(c) In their [his] personal property or effects.

(2) A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:

(a) Keep a log of their [his] activities on "Veterinary Report Of Horses Treated"; and

(b) Submit a copy of "Veterinary Report Of Horses Treated" to the commission veterinarian office of the track each day of a race meeting.

(2) The log shall include the:

- (a) Name of horse;
- (b) Name of trainer;
- (c) Nature of ailment;
- (d) [(c)] Type of treatment; and
- (e) [(d)] Date and hour of treatment.

(3) The veterinarian shall report to the presiding judge or the commission veterinarian any internal medication given by him by injection or orally to a horse after he has been declared to start in any race.

Section 13. (1) A veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall:

- (a) Use only one (1) time disposable type needles; and
- (b) Not reuse a disposable needle.

(2) The disposable needles shall be kept in his possession until disposed of by him off the track.

(3) A veterinarian, assistant veterinarian or his employee shall not leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 14. (1) Approval and prescription of lasix for racing shall be made:

(a) By the commission veterinarian, or a licensed veterinarian approved by the commission; and

(b) If the:

1. Commission or licensed veterinarian has seen the horse bleed from the nostrils; or

2. Horse has been scoped and declared a bleeder by the commission veterinarian or a licensed veterinarian.

(2) If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting.

(3) Only the commission veterinarian may administer lasix prior to a race, including [qualifying;] nonbetting, pari-mutuel races, and time trials.

(4) The use of oral lasix shall be forbidden.

(5) The judges [commission] shall keep a record of horses using lasix for the first time.

(6) A lasix administration time schedule shall be posted. [A schedule for scoping shall be maintained by the commission veterinarian.]

(7) No more than 250 milligrams four (4) hours prior to a race shall be administered.

(8) A fee of ten (10) dollars shall be paid to the commission designee for [veterinarian] when lasix is administered to a horse.

(9) If a trainer no longer wishes to use lasix:

(a) A "Termination of Lasix" shall be submitted to the judges [commission] office at the track; and

(b) Before being allowed to race without lasix, a horse shall:

1. Perform in a qualifying race without the use of lasix; and

2. Meet the standards of the meeting; and

(c) A horse shall qualify and meet the standards of the meeting prior to being permitted to use lasix again.

(10)(a) Testing shall be quantitative, and a urine with a specific gravity of less than 1:010 along with a blood level of 100 nanograms or greater shall be subjected to the penalties provided in Section 16 of this administrative regulation [and with those exceeding thirty (30) nanograms per milliliter of blood tested resulting] in a warning to the trainer [owner].

(b) [Testing shall be at random, not to exceed six (6) samples per day;

(c)] A mutual decision to take random samples shall be made by the commission veterinarian and the judges.

[(d)] A second violation of this subsection shall result in a fine against the owner, not to exceed \$5,000.

(11) Horses that bleed while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.

(a) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commis-

sion or his designee.

(b) The opinion of the third veterinarian shall be delivered to the presiding judge and the commission veterinarian who shall make a final decision on the issue. [(a) If a horse bleeds through normal treatment with lasix, the horse shall not be eligible to race for 120 days;

(b) After 120 days, the horse shall again qualify on lasix. If the horse bleeds, it shall not be eligible to race for one (1) year.]

Section 15. Phenylbutazone. (1) [A trainer who requests permission to race his horse on phenylbutazone shall complete the Phenylbutazone Use Form. This form shall be submitted to the commission veterinarian before the time of entry;

(2) A trainer who requests permission to remove his horse from the phenylbutazone program shall complete the Phenylbutazone Removal Form. This form shall be submitted to the commission veterinarian by the time of entry;

(3) A horse that is not properly registered shall not be permitted to race with phenylbutazone;

(4)] The oral or intravenous administration of phenylbutazone shall not be permitted within twenty-four (24) hours of post time of the first race.

(2) [(5)] The phenylbutazone dosage administered shall not exceed:

(a) Two (2) grams (g) oral; or

(b) Two (2) grams (g) intravenous.

(3) [(6)] A post race sample reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be subject to the penalties provided in Section 16 of this administrative regulation.

[(7) The trainer of a horse that tests above the normal limit for phenylbutazone shall be held responsible.]

(4) [(8)] The oral administration of phenylbutazone may be performed by the trainer.

(5) [(9)] Phenylbutazone, injected intravenously, shall be administered by the commission veterinarian or a licensed veterinarian approved by the commission.

[(10) The commission veterinarian or licensed veterinarian shall keep a log of phenylbutazone activity as provided by Section 12(1) of this administrative regulation.]

Section 16. Unless otherwise provided, the penalty for violation of the provisions of this administrative regulation shall be:

(1) A fine not to exceed \$10,000 [5,000];

(2) Suspension not to exceed one (1) year;

(3) A fine not to exceed \$10,000 [5,000], and a suspension not to exceed one (1) year; or

(4) Expulsion.

Section 17. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Termination of Lasix, KRC-1(8/97)"; and

(b) "Veterinary Report Of Horses Treated, KRC-2(8/97)";

(c) "Phenylbutazone Use Form KRC-7(9/98)"; and

(d) "Phenylbutazone Removal Form KRC-8(9/98)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

# REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

## (1) Narrative summary of:

(a) What the administrative regulation does. This administrative regulation provides for the testing of horses for stimulants and drugs, the guidelines for this testing, and penalties for abusing this regulation.

(b) The necessity of the administrative regulation: This administrative regulation governs all aspects of drugs, drug testing, commission veterinarian responsibility, and penalties for abusing this administrative regulation which aids in the honesty and integrity of racing.

(c) How the administrative regulation conforms to the content of the authorizing statutes: The governing statutes regulate conditions under which harness racing shall be conducted in Kentucky.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidelines for which horses are drug tested and the penalties for violating these regulations.

(2) If this is an amendment will change the existing administrative regulation, a brief narrative summary of:

(a) How the amendment will change the existing administrative regulation: The proposed administrative changes will bring the drug testing at pari-mutuel tracks up to current standards and increase the penalties for violating these regulations.

(b) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 gives the commission the authority to promulgate or amend any administrative regulations it deems necessary.

(c) How the amendment will assist in the effective administration of the statutes: The commission shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing shall be conducted in this state.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: All standardbred horses racing at tracks in the state of Kentucky will be affected by these proposed changes.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. Horses currently racing at Kentucky track are subject to drug testing. These proposed changes are expanding the list of drugs that will be tested for in race horses and increasing the penalties for violating these regulations.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: The individual race-tracks pay for the horse drug testing during their pari-mutuel meets. The Blood Gas testing will be performed by commission personnel already working at the tracks.

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be increased for these proposed amendments.

(9) Tiering: Is tiering applied. Tiering was not applied. This administrative regulation establishes the guidelines for which horses are drug tested and the penalties resulting from positive drug testing results.

## PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

### 811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.260, 230.310, 230.280, 230.290, 230.300, 230.3771, 230.770, 230.990 [~~230.630, 230.640, 230.680, 230.690, 230.710~~]

STATUTORY AUTHORITY: KRS 230.260, 230.310 [~~230.630~~]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions, races, purses and payments in races conducted at fairs in which funds for purses are provided by the Kentucky [Harness] Racing Commission. The function of this administrative regulation is to regulate eligibility for participation in harness racing at county fairs.

Section 1. Definitions. "Persons domiciled in Kentucky" are those persons that have their true, fixed and permanent home in Kentucky and to which they have an intention of returning whenever they are absent and, those corporations wholly owned by a person domiciled in Kentucky. Factors which indicate domicile and intent include, but are not limited to:

(1) The amount of time spent in Kentucky each year by the person in question as compared to the amount of time spent by him elsewhere;

(2) Whether or not the person or corporation in question owns real estate in Kentucky;

(3) Whether or not the person in question is registered to vote in Kentucky, or whether the corporation in question was organized under Kentucky law;

(4) The "permanent residence" of the person in question as indicated by the records of the Kentucky [Harness] Racing Commission and the United States Trotting Association;

(5) Whether or not the person in question has a Kentucky automobile driver's license.

Section 2. Fair Committee. (1) The Kentucky Racing Commission shall determine all questions of domicile. [~~Each county fair board shall appoint a committee composed of three (3) persons to determine questions of domicile.~~]

(2) The Kentucky Racing Commission [committee] shall weigh the [all] factors set forth in Sections 1 and 3 [Section 1(1) to (5)] of this administrative regulation in determining questions of domicile.

[~~(3) Any decision of a fair committee may be appealed directly to the Kentucky Harness Racing Commission.~~]

Section 3. Eligibility. The following horses are eligible to participate in stake races at county fairs:

(1) [~~Those~~] Two (2) and three (3) year olds that are [were] sired by a stallion that was registered with the Kentucky Standardbred Development Fund at the time of conception.

(2) Two (2) and three (3) year olds that are wholly owned by a "person domiciled in Kentucky," both at the time of nomination and at the time of the contest of the race.

(3) Two (2) and three (3) year olds whose dams were wholly owned by a person domiciled in Kentucky at the time of conception.

(4) Owner(s) of the participating horse must be a current member of the Kentucky Colt Racing Association, Inc.

(5) Owner(s) of the participating horse must hold a current license with the Kentucky Racing Commission.

(6) Trainer and driver of the participating horse must hold a current license with the Kentucky Racing Commission. [~~Foals of 1984 to race as two (2) year olds in 1986 and three (3) year olds in 1987; foals of 1985 to race as two (2) year olds in 1987 and three (3) year olds in 1988 in accordance with subsection (1) or (2) of this section. Foals of 1986 and thereafter to race as two (2) and three (3) year olds in accordance with subsection (1) of this section.~~]

Section 4. Each fair shall have a safe and adequate track with entire track, including start and finish lines, visible to judges and spectators. The track shall be inspected and approved by a representative of the Kentucky [Harness] Racing Commission.

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Section 5. All tracks must have a hub rail or pylons (of some type to be) approved by the Kentucky [Harness] Racing Commission.

Section 6. Each fair shall have safe and adequate stalls for participating horses. If permanent stalls [barns] are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used. No county fair shall charge stall rent for horses racing at the county fairs with the exception of state-owned property. [This can be accomplished by knowing the number of "ship-in" horses and possibly by stabling some horses off the grounds in private barns.]

Section 7. Nomination fees shall be set by the Kentucky Racing Commission. [the same at all tracks and shall be set by the Kentucky Harness Racing Commission. (See Section 15 of this administrative regulation.)]

Section 8. All fairs shall use licensed United States Trotting Association [presiding] judges to preside over the racing.

(1) The judges shall review the ownership of each horse that is entered in order to insure that it is eligible to race.

(2) The judges may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(3) The judges may declare ineligible to race any horse, the ownership or control of which, is in question.

Section 9. All fairs shall use a licensed starter with adequate equipment.

Section 10. The entry fee shall be set by the Kentucky [Harness] Racing Commission [see Section 15 of this administrative regulation] and shall be collected by each fair and used for paying racing officials, to provide purses for overnight racing events, and to promote fair racing as otherwise needed. Each fair shall, upon request, make a full accounting of the entry fees to the Kentucky Racing Commission. [purses for overnight racing events, paying starters, paying presiding judges, promoting fair racing or otherwise as needed in the discretion of the fair collecting the fee. Each fair shall be responsible for making a full accounting of the entry fees to the Kentucky Harness Racing Commission within sixty (60) days of the completion of the meet.]

Section 11. Each fair shall apply to the Kentucky [Harness] Racing Commission for a license to race and for approval of funds by December 15 of the year prior to the racing year. At the time of application, the request for pari-mutuel wagering shall be included.

Section 12. Each fair reserves the right to change the order of its program and to postpone or cancel any event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, all entry fees shall be refunded.

Section 13. Each early closing event, and all divisions thereof, shall race a single heat at a distance of one (1) mile and shall be contested for a purse determined by the Kentucky Racing Commission annually.

Section 14. There shall be no more than nine (9) starters in any race. If a race is divided into divisions the purse shall be divided so that each division races for an equal portion thereof. The purses shall be divided as follows:

(1) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(2) Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;

(3) Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;

(4) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and

(5) One (1) starter - 100 percent.

Section 15. Points shall be awarded in each early closing race, and any division thereof, as follows:

(1) First place finisher - fifty (50) points;

(2) Second place finisher - twenty-five (25) points;

(3) Third place finisher - twelve (12) points;

(4) Fourth place finisher - eight (8) points;

(5) Fifth place finisher - five (5) points; and

(6) Each starter that finishes out of the money - one (1) point.

(7) In the event two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for said position and one-half (1/2) the points awarded for the next lower position. The same procedure shall be used for the allocation of points in the event of a dead-heat of three (3) or more horses.

(8) Horses that are declared in and then are the subject of the judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision will be final.

(9) Any horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a fair start and one (1) point.

(10) In the event there is a tie among two (2) or more horses with the same number of points, said tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which said horses have competed.

Section 16. Entry fees for both overnight and early closing races shall be set annually by the Kentucky Racing Commission. Fees for each early closing race shall consist of:

(1) A nomination fee payable on or before February 15.

(2) A sustaining fee payable on or before April 15.

(3) An entry fee per fair, per horse.

Section 17. No horse shall be entitled to compete in more than one (1) race at any fair.

Section 18. In order to maintain eligibility to the county fairs after the payment of the nomination fee, the following payments are required for a horse to remain eligible when there is a transfer of ownership:

(1) \$300 the first time ownership is transferred from the owner at the time of nomination.

(2) An additional \$600 each time thereafter when the same horse is transferred.

Section 19. At each fair the winning horse in every race and any horse the judges deem necessary shall be subjected to a drug test as set forth in 811 KAR 1:090. Each fair shall provide two (2) enclosed stalls and bedding to be used by the state veterinarian for drug testing.

(1) These stalls shall be located as close to the race track as possible.

(2) These stalls shall have the accessibility to hear the track announcer.

Section 20. A current negative Coggins test shall be required on all horses racing at each fair.

Section 21. All drivers shall wear full colors, with white pants, and an approved helmet when on the track less than one (1) hour before the start of any fair racing program.

Section 22. Each fair shall provide a trophy or blanket to the winner of each race. Where a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 23. Each early closing race shall be contested regardless of the number of entries. However, each fair shall have the right to cancel any overnight race with less than five (5) entries.

Section 24. The deadline for entries at each fair shall be 10 a.m. (local time prevailing) on the third day before its first day's racing program, omitting Saturdays, Sundays, and holidays.

Section 25. Each county fair track where purses are raced for shall provide a printed program available to the public with the following information for:

(1) Nonpari-mutuel tracks;

(a) Horse's name and sex;

(b) Color and age of horse;  
 (c) Sire and dam of horse;  
 (d) Owner's name and colors;  
 (e) Driver's name;  
 (f) Trainer's name; and  
 (g) Summary of starts in purse races, earnings, and the best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.

(2) Pari-mutuel tracks:  
 (a) Horse's name and sex;  
 (b) Color and age of horse;  
 (c) Sire and dam of horse;  
 (d) Owner's name;  
 (e) Driver's name and colors; —  
 (f) Trainer's name;  
 (g) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.

(h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

1. Date of race;
  2. Location of race;
  3. Size of track if other than a one-half (1/2) mile track;
  4. Symbol for free-legged pacers;
  5. Track condition;
  6. Type of race;
  7. Distance;
  8. The fractional times of the leading horse including race times;
  9. Post position;
  10. Position of the one-quarter (1/4), the one-half (1/2), and the three-quarters (3/4);
  11. Stretch with lengths behind leader;
  12. Finish with lengths behind leader;
  13. Individual time of the horse;
  14. Closing dollar odds;
  15. Name of the driver;
  16. Names of the horses that placed first, second, and third by the judges; and
  17. The standard symbols for breads and park-outs shall be used where applicable.
- (i) Indicate drivers racing with a provisional license.  
 (j) Indicate pacers that are racing without hobbles.

Section 26. Payments. All nomination and sustaining payments are to be made to the Kentucky Racing Commission. All entry fees are to be paid to the fair for which the entry is taken.

Section 27. Unless otherwise provided herein, the rules and administrative regulations of the Kentucky Racing Commission and the United States Trotting Association shall apply. In the event of a discrepancy in said rules and administrative regulations, the administrative regulations of the Kentucky Racing Commission shall take precedence. [All fairs shall have a complete racing program to be eligible for funds from the Kentucky Harness Racing Commission which shall include overnight events for horses of all ages and classes. Purse distribution shall be determined by a majority of participating fair managers, subject to approval of the Kentucky Harness Racing Commission.]

Section 13. The Kentucky Harness Racing Commission shall award dates and approval of funds by January 15 of the applicable racing year.

Section 14. Each fair shall have a printed program, and, if there is pari-mutuel betting, the program shall show number of starts, number of firsts, seconds, and thirds, best winning time, and money earned.

Section 15. Payments. Nomination and sustaining fees are payable to the Fair Nominations Fund and mailed to the Kentucky Harness Racing Commission. Entry fees are payable to the individual fairs.

COUNTY FAIR PAYMENT SCHEDULE	
February 15 Nomination Fee	\$30 per horse. (makes horse eligible to all fairs)
April 15 Sustaining Fee — each fair	\$20 per horse.
Entry Fee — each fair	\$40 per horse.]

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 14, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 2001, 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 20, 2001, 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: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, (859) 246-2040 Phone, (859) 246-2039, Fax.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the administrative regulation does. This administrative regulation regulates the conditions, races, purses, and payments for races conducted at county fairs in the state.

(b) The necessity of the administrative regulation: This administrative regulation governs aspects of county fair racing in the state.

(c) How the administrative regulation conforms to the content of the authorizing statutes: It gives the commission full authority to prescribe the regulations and conditions under which racing shall be conducted at the county fairs.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidelines for horses racing at the county fairs.

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

(a) How the amendment will change the existing administrative regulation: The proposed administrative changes will bring the current regulation up to current standards and in line with the racing held at the pari-mutuel tracks in the state. This administrative regulation has not been updated since the 1980's.

(b) How the amendment conforms to the content of the authorizing statutes: This administrative regulation governs all areas of county fair racing from the licensing of individuals to the running of the county fair races.

(c) How the amendment will assist in the effective administration of the statutes: KRS 230.260 gives the commission full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at county fairs shall be conducted in this state.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Each year there are 8 county fairs races and 1 fair final held in the state. Approximately 290 horses nominated to the county fairs each year.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation. The horses racing at the county fairs are will already be racing at the pari-mutuel tracks in the state where these regulations

already apply.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Entry fees shall be set annually by the Kentucky Racing Commission. These fees consist of an nomination fee payable before February 15, a sustaining fee payable before April 15, and an entry fee per fair, per horse. Payments are required for a horse to remain eligible when there is a transfer of ownership. These consist of \$300 the first time ownership is transferred from the owner at the time of nomination. An additional \$600 each time thereafter when the same horse is transferred.

(9) Tiering: Is tiering applied. Tiering was not applied. This administrative regulation regulates the eligibility for participation in harness racing at county fairs.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Physical Health  
(Amendment)**

**907 KAR 3:010. Reimbursement for physicians' services.**

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a, b, c, d, s

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 method of reimbursement for physicians' services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Resource-based relative value scale (RBRVS) unit" means a value based on the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the costs [prices] of staffing and other resources required to provide the service in an area relative to national average price.

(4) "Screening" means the review of the health and health-related condition of a recipient by a physician to determine if further diagnosis or treatment is needed.

(5) "Usual and customary charge" means a [the] uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Except as specified in Section 3 of this administrative regulation, payment for a covered physician's service shall be based on the physician's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS). If there is not an RBRVS based fee, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge [the department shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology].

(2) A RBRVS unit shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be

as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except Delivery related)	\$29.02
All Other Services	\$29.67

Section 3. Reimbursement Exceptions. The following reimbursement exceptions shall apply [as established in the Physicians Manual].

(1)(a) The department shall reimburse a physician a three (3) dollar and thirty (30) cent administration fee for a vaccine administered to a Medicaid recipient under the age of twenty-one (21) up to three (3) administrations per physician, per recipient, per date of service.

(b) The department shall not reimburse a physician for the cost of a vaccine which is available free through the Vaccines for Children Program in accordance with 42 USC 1396s.

(c) There shall be no limit on the number of administration fees for injectable anticancer drugs for which a physician may receive reimbursement per recipient per date of service.

(2)(a) A payment for the following specified obstetrical services shall be reimbursed the lesser of:

1. The actual billed charge; or

2. A [The] standard fixed fee paid by type of procedure.

(b) The obstetrical services and standard fixed fees shall be:

1. Vaginal delivery only, \$870;

2. Vaginal delivery including postpartum care, \$900;

3. Cesarean delivery only, \$870; and

4. Cesarean delivery including postpartum care, \$900.

(3)(a) For a delivery-related anesthesia service [services], a physician shall be reimbursed the lesser of:

1. The actual billed charge; or

2. A standard fixed fee paid by type of procedure.

(b) Delivery-related anesthesia procedures and standard fixed fees shall be:

1. Vaginal delivery, \$200;

2. Epidural single, \$315;

3. Epidural continuous, \$335; and

4. Cesarean section, \$320.

(4) Payment for a service provided to an individual eligible for coverage under Medicare Part B shall be made in accordance with 907 KAR 1:006 [the individual's Medicare deductible and coinsurance liability].

(5) A family practice physician practicing in a geographic area with no more than one (1) primary care physician per 5,000 population, shall be reimbursed as specified in KRS 205.560(10) [as reported by the United States Department of Health and Human Services, shall be reimbursed at the physician's usual and customary actual billed charge up to 125 percent of the fixed upper limit per procedure established by the department].

(6) A physician laboratory service shall be reimbursed at [based on] the Medicare allowable payment rate. For a laboratory service with no established Medicare allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge.

(7) [A procedure specified by Medicare and published annually in the Federal Register which is commonly performed in the physician's office shall be:

(a) Subject to outpatient limits if provided at an alternative site; and

(b) Paid an adjusted rate to take into account the change in the usual site of service;

(b) A payment for an [the] injection procedure for chemonucleolysis of a lumbar intervertebral disk [lumbar] shall be the lesser of:

(a) The actual billed charge; or

(b) A fixed upper limit of \$793.50.

(8) [(9)] Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of:

(a) The actual billed charge; or

(b) The average wholesale price of the medication supply minus ten (10) percent.

[(10)] Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of:

(a) The actual billed charge; or



(b) ~~The established RBRVS fee plus actual cost of the supply minus ten (10) percent.~~

(9) [(11)] For a practice-related service provided by a physician assistant, the participating physician shall be reimbursed at the lesser of:

- (a) The usual and customary actual billed charge; or
- (b) Seventy-five (75) percent of the physician's fixed upper limit per procedure.

(10) [(12)] Reimbursement [rates] for a screening service provided to a recipient under the age of twenty-one (21) shall be in accordance with the following:

(a) Except the fifth year (kindergarten examination) and twelfth year (sixth grade examination), the fee for a complete screening, which shall include all items or procedures listed in 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient; ~~except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee~~ shall be seventy (70) dollars per recipient screened;

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(c) For a partial screening, which shall include at least a health history and unclothed physical examination, the fee shall be thirty (30) dollars per recipient screened;

(d) For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in paragraph (c) of this subsection, the fee shall be forty (40) dollars per recipient screened;

(e) For an interperiodic screen, which shall be medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened; and

(f) An amount payable to a physician for a service in accordance with this subsection shall not exceed the usual and customary charge of the provider for the service.

Section 4. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671. [The preestablished fees payable shall not exceed the usual and customary charge of the provider for the service.]

DENNIS BOYD, Commissioner  
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: January 27, 2001

FILED WITH LRC: February 15, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill 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).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a methodology for payment to be made by the Department for Medicaid Services for physician services.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by federal and state laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations for the provision of medically necessary health services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment revises the existing policy for coverage of the administration of injectable anticancer drugs to allow for payment of more than 1 administration of these drugs per recipient, per date of service.

(b) The necessity of the amendment to this administrative regulation: This amendment allows greater access to health services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by state and federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify criteria relating to the provision of medically necessary health services to Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All fee for service Medicaid recipients (approximately 480,000) and all physicians enrolled in the Kentucky Medicaid Program (approximately 17,000).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: By eliminating the existing limit on reimbursement of more than one administration of injectable anticancer drug per date of service, Medicaid recipients requiring treatment for malignant conditions will have greater access to medically necessary health services.

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

(a) Initially: \$28,684

(b) On a continuing basis: Approximately \$28,684 annually, depending on the level of utilization.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds of \$20,237 (70.55%) and state matching funds from general fund appropriations and collections amounting to \$8,447 (29.45%).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will be unnecessary to implement this amendment. The funding for this initiative is derived from a redirection of funds for current services in the enacted budget. In the Department for Medicaid Services, it is difficult to control costs in any way other than through a reduction in services, eligibles, or reimbursement rates should it become necessary.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as

Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR FAMILIES AND CHILDREN  
Department for Community Based Services  
Division of Policy Development  
(Amendment)

921 KAR 1:020. Child Support Program: confidentiality, program administration contracts, and agreements.

RELATES TO: KRS Chapter 45A, 194B.050(1), 205.175, 205.177, 205.710-205.800, 205.990(1), (2), (4), (5), 403.211, 405.430(9), (13), 405.520, 406.035, 434.845, 45 CFR 302.34, 303.70(d)(2), 303.107, 26 USC 6103(a), (b), 7213(a)(2), 31 USC 7502, 42 USC 651 et seq.[-EØ-98-73†]

STATUTORY AUTHORITY: KRS 194B.050(1), 205.175, 205.710-205.800, 405.430(9), (13), 405.520, 406.035, 42 USC 651 et seq.[-EØ-98-73†]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.710 to 205.800 provide that the Cabinet for Families and Children administer the Child Support Program (CSP). This administrative regulation establishes the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Safeguarding Information. (1) Use or disclosure of information obtained exclusively for the CSP shall be restricted pursuant to KRS 194B.060, 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), 205.776, 45 CFR 303.70(d)(2), 302.34, 26 USC 6103(a), (b), 7213(a)(2), and 42 USC 654(26).

(2) Unless an applicant for or recipient of child support services has given informed consent, information concerning the applicant or recipient of child support services shall only be released in accordance with KRS 205.177. [If the cabinet determines there is reasonable cause to believe there is evidence of domestic violence or child abuse, records shall not be opened or published.

(2) ~~The use or disclosure of information concerning an applicant or recipient of CSP services or the noncustodial parent, or obligor, shall be limited to:~~

(a) ~~The administration of the CSP or other federal or federally assisted program that provides assistance or services directly to an individual on the basis of need; or~~

(b) ~~An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in this section.]~~

Section 2. Program Administration Contract. (1) A program administration contract initiated by the cabinet with another government entity shall comply with KRS Chapter 45A and shall:

(a) Contain a clear description of specific duties, functions and responsibilities of the parties [each party] in administration of the CSP;

(b) Specify clear and definite standards that meet federal requirements;

(c) Specify financial reimbursement arrangements including:

1. Budget estimate;
2. Covered expenditures;
3. Methods of determining costs; and
4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain [appropriate] reporting requirements;

(f) Contain the requirements for compliance with 31 USC 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

- (a) Established by the cabinet; and
- (b) Specified in the contract.

(3) The contracted government entity shall provide to the cabinet in a timely fashion statistical information concerning CSP activities as prescribed by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official in accordance with the official's statutory obligations, but the official shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. An Agreement with a Financial Institution. The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.712(14), 205.772 and 205.774 to conduct a financial data match.

(1) The cabinet or its agent shall implement the data exchange. The cabinet or its agent shall:

(a) Have access to [all] identifying information for an [each] obligated parent who owes an arrearage and who the cabinet has identified to a financial institution through a data match for the purpose of monitoring and auditing; and

(b) Have access to [all] identifying information available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(2) The cabinet shall pay a financial institution a fee not to exceed \$250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(3) A financial institution shall:

(a) Exchange information by way of an automated data exchange system;

(b) Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall:

1. Be maintained and safeguarded as confidential; and

2. Not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder;

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or

3. Providing a file to the cabinet or its authorized agent in accordance with an approved format as described by the Financial Institution Data Match Specifications Handbook incorporated by reference in Section 4 of this administrative regulation.

(4) If a financial data match occurs, a financial institution shall:

(a) Hold, encumber or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver;

(b) Address and send to the cabinet or its authorized agent as designated, [all] notices, paperwork, tapes or other communication resulting from a financial institution data match program; and

(c) Submit [all] data files to the cabinet or its authorized agent as designated.

(5) The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy and no account shall [will] be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.

(6) The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format prescribed by the Financial Institution Data Match Specifications Handbook, incorporated by reference in Section 4 of this administrative regulation, using either Method One or Method Two.

(a) If a financial institution agrees to provide the information according to Method One, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of a [each] calendar year, data files of [all] open accounts to the cabinet, or the cabinet's authorized agent, for the data match; and

2. Report [all] information required by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to Method Two, the financial institution shall:

1. Request the cabinet to send the inquiry file to the financial institution's agent;

2. Match the inquiry file of obligors identified and provided by the

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cabinet, or by the cabinet's authorized agent, against [all] open accounts maintained by a financial institution; and

3. Submit a report of [all] matched accounts to the cabinet or its authorized agent within thirty (30) days of receipt of the inquiry file.

Section 4. Incorporation by Reference. (1) "Financial Institution Data Match Specifications Handbook", edition 3/99, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner  
CHARLES P. LAWRENCE, Attorney  
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 5, 2001

FILED WITH LRC: February 14, 2001, at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2001, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellie Peace, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the requirements for safeguarding information and entering into program administration contracts and cooperative agreements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary pursuant to provisions of KRS 205.712(2) which require the cabinet to enforce and collect child support obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides requirements and procedures for safeguarding information, program administration contracts and cooperative agreements.

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

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

1. Add USC's that restrict the sharing of information obtained from the Internal Revenue Service;

2. Add CFR's that restrict the sharing of information obtained from the Federal Parent Locator Service;

3. Clarify restrictions to information sharing pursuant to KRS 205.177; and

4. Make technical corrections in language pursuant to KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include relevant USC's, CFR's and KRS's in the statutory authority section of the regulation and to clarify requirements for sharing recipi-

ent/applicant information.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the content of the authorizing statutes by limiting information sharing accordingly.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing references to relevant USC's and CFR's and KRS's as well as clarification of KRS 205.177 for the proper safeguarding of information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Banks, financial institutions, county attorneys and special prosecutors

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment does not revise existing requirements for financial institutions or contracting entities. Section 3 of this administrative regulation complies with Kentucky Revised Statutes pertaining to financial data matches.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Refer to item (5).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees nor increases fees.

(9) TIERING: Is tiering applied? Tiering was not applied because the Child Support 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 administrative regulation will affect contracting officials.

3. State the aspect or service of local government to which this administrative regulation relates. County attorneys or special prosecutors enter into program administration contracts with the Child Support Program.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation establishes requirements for program administration contracts between contracting officials and the Child Support Program; however, only KRS Chapter 13A changes were made to this section (Section 2) of the regulation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 USC 6103(a),(b), 7213(a)(2). 42 USC 654(26), CFR 303.70(d)(2).

2. State compliance standards. 921 KAR 1:020, Section 1(1).

3. Minimum or uniform standards contained in the federal mandate. The state IV-D agency must have safeguards in place to protect FPLS, IRS and all applicable confidential information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State standards are not more restrictive than federal language.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standards.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 2001

KENTUCKY STATE BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
(New Administrative Regulation)

201 KAR 18:133. Administrative hearings.

RELATES TO: KRS Chapter 13B, 322.180, 322.190, 322.200, 322.290(4), 322.300

STATUTORY AUTHORITY: KRS 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: Replaces 201 KAR 18:131 and establishes procedural guidelines for administrative hearings as required under KRS Chapter 322 and consistent with KRS Chapter 13B.

Section 1. Definitions. (1) "Action" means a charge brought under this administrative regulation and KRS Chapter 13B.

(2) "Board" means the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(3) "Charge" means a written accusation alleging a violation by a licensee filed with the division.

(4) "Complaint" means a written statement made by any person or organization and delivered to the board alleging a violation of any provision of KRS Chapter 322 or any administrative regulation adopted by this board. No complaint shall be deemed a charge under KRS 322.200 until the same has been investigated by the executive director, probable cause has been found, and a charge has been filed with the division.

(5) "Consent decree" means an order entered by the board with the written consent of a licensee. If a charge has been filed, a consent decree is a final order as defined in KRS Chapter 13B. No consent decree is binding until approved by the board.

(6) "Division" means the Division of Administrative Hearings, Office of the Attorney General.

(7) "Final order" means a final order as used in KRS Chapter 13B.

(8) "Hearing officer" means a hearing officer as defined in KRS Chapter 13B.

(9) "Licensee" means an individual licensed by the board to practice engineering or land surveying in this Commonwealth. It also means a business entity permitted under KRS 322.060 to practice engineering or land surveying.

(10) "Notice" means a notice of administrative hearing satisfying the requirements of KRS 13B.050(3).

(11) "Probable cause committee" means a committee consisting of a member of the board designated by the executive director; the executive director; and the general counsel, whose duty shall be to determine whether probable cause exists against any licensee.

(12) "Probable cause" means a determination that sufficient evidence exists to persuade a reasonable person to believe that a licensee has committed a violation.

(13) "Respondent" means a licensee against whom a charge has been filed. It also means a licensee who enters into a consent decree.

(14) "Staff conference" means a conference between a licensee and his attorney, if any, and board staff to attempt to resolve matters raised in a complaint or charge.

(15) "Violation" means any act or failure to act contrary to any provision of KRS Chapter 322 or any administrative regulation adopted by this board.

Section 2. Complaints. (1) Any person may file a complaint with the executive director alleging a violation.

(2) A complaint shall be in writing, be signed, and shall state facts showing why the complainant believes a violation has occurred.

(3) If it appears to the executive director that no violation has occurred even if the facts stated in the complaint are true, he shall reject the complaint with a written explanation. If the complaint is not rejected, the executive director shall cause the complaint to be investigated and the results submitted to the probable cause committee.

(4) If the probable cause committee does not find probable cause, the executive director shall return the complaint to the complainant with a written statement that the probable cause committee has not

found probable cause.

(5) If the probable cause committee finds probable cause, it may direct that charges be filed but may direct that a staff conference occur prior to the filing of charges. The committee may recommend negotiable terms for discussion at a staff conference.

(6) If, at any time, the executive director concludes that a violation has occurred, but that it is not of a serious nature, he may refer the matter to the board with a recommendation that a written admonishment be issued to the licensee. The board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee may file a response to the admonishment within thirty (30) days of its receipt and have the response placed in his permanent file, or, within thirty (30) days of receipt of an admonishment, he may file a request for a hearing with the executive director. Upon receipt of the request, the executive director shall set aside the written admonishment and set the matter for hearing pursuant to this administrative regulation and KRS Chapter 13B. If the board denies the executive director's recommendation, the matter shall be investigated and submitted to the probable cause committee.

Section 3. Investigation. (1) The general counsel may preserve the confidentiality of an investigation until disclosure is required under KRS Chapter 13B.

(2) No results of an investigation shall be disclosed to any member of the board except the member serving on the probable cause committee, except that the board, in session, may be advised generally of the nature of pending charges as part of a disciplinary report made by staff.

Section 4. Staff conferences shall be conducted at the board office at a time convenient to the staff and the licensee and his attorney, if any.

Section 5. Charges. Charges shall be in plain language in the pleading form used in the circuit courts of this Commonwealth, signed by the general counsel, and shall contain the following:

(1) A statement of the factual basis for the charges;

(2) A statement of issues involved in sufficient detail to give the respondent reasonable opportunity to prepare evidence and argument; and

(3) A reference to the specific statutes and administrative regulations which relate to the issues involved.

Section 6. Commencement of Action. An action is commenced by sending a notice to the last known address of the respondent by certified mail, return receipt requested, or by personal service, and by serving a copy of the notice on the division.

Section 7. Answer. Within twenty (20) days of notice, a respondent shall file with the board and with the hearing officer an answer either admitting or denying, or admitting in part or denying in part, any charge.

Section 8. Default. (1) A default shall be deemed a confession of all material allegations contained in the charge.

(2) If the respondent fails to timely answer, the hearing officer shall issue a show cause order giving the respondent seven (7) days to show cause why he should not be found in default and informing him of the consequences of a default order.

(3) Unless the default is the result of excusable neglect, the hearing officer shall submit to the board a recommended final order.

(4) At the next meeting, the board shall enter a final order.

Section 9. Prehearing Conference. (1) The hearing officer shall schedule a prehearing conference at the convenience of the parties at the board office. At the conference, the parties shall be granted a reasonable time in which to conduct a staff conference.

(2) If a settlement is reached, the hearing officer shall adjourn the conference.

(3) If a settlement is not reached, the hearing officer shall schedule a hearing and the exchange of evidence, witness lists and the filing of dispositive motions. The scheduling order shall indicate whether the parties have waived the limitations set out in KRS 322.200.

Section. 10. Amended Pleadings. (1) A party, as a matter of right, may amend a pleading not later than thirty (30) days before a scheduled hearing as a matter of right. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party, and leave shall be freely given when justice so requires.

(2) If an amended pleading introduces new legal or factual issues which cannot reasonably be met by the opposing party prior to the scheduled hearing, the hearing officer may continue the hearing.

Section 11. Discovery. If the parties do not otherwise agree, discovery shall be governed by KRS 13B.090(3).

Section 12. Hearings. (1) Hearings shall be conducted at the board office at a time convenient for all parties.

(2) The board shall bear the burden of proof on all issues.

(3) The conduct of the hearing shall be governed by KRS 13B.090.

Section 13. Evidence. (1) The Kentucky Rules of Evidence shall not control the receipt of evidence.

(2) The hearing officer may receive any evidence which is considered to be reliable, including testimony that would be considered hearsay if presented in a court, provided that it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, and provided that such evidence alone shall not be sufficient to support the hearing officer's findings of fact unless it would be admissible over objection in civil actions.

(3) Documents may be admitted in the form of copies or excerpts, and need be authenticated only to the extent necessary to persuade the hearing officer of their genuineness and accuracy. Tangible evidence shall be admitted without objection as to a legal chain of custody if the hearing officer is persuaded that the item is what it is represented to be and in substantially the same condition it was in at the time of the events under consideration.

(4) The hearing officer may exclude evidence considered to be unreliable, incompetent, irrelevant, immaterial, unnecessarily repetitive, or excludable on constitutional or statutory grounds, or evidence that is the subject of evidentiary privilege recognized by the courts.

(5) The hearing officer may take notice of judicially cognizable facts and generally recognized technical and scientific facts provided a party is afforded an opportunity to contest the facts so noticed.

Section 14. Recommended Order. (1) Not later than thirty (30) days after the receipt of the official record of the hearing, the hearing officer shall file with the board, with copies to the parties, a recommended final order.

(2) The hearing officer, on his own motion, may extend the time for filing a recommended final order for a maximum of thirty (30) days.

(3) Not later than fifteen (15) days after the mailing of the recommended final order, a party may file with the board exceptions addressing any matters the party deems appropriate. Exceptions shall not exceed fifteen (15) pages, double spaced.

Section 15. Final Order. (1) After the close of time for filing exceptions, the board shall issue a final order not later than the second consecutive meeting of the board unless the matter is remanded to the hearing officer for further proceedings.

(2) The board may accept the hearing officer's recommended order and adopt it as the board's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings.

(3) No person who has participated in the prosecution of the charges shall participate in the board's deliberations.

(4) A final order shall be in writing and be stated in the record. If the final order differs from the recommended final order, it shall include separate statements of findings of fact and conclusions of law, and shall be prepared by the hearing officer at the board's direction. The

final order shall also include the effective date of the final order and a statement advising the respondent of available appeals rights.

(5) A copy of the final order shall be transmitted to the respondent or his attorney of record by certified mail, return receipt requested.

Section 16. Show Cause. If the executive director has probable cause to believe that a respondent has violated the terms of any final order or consent decree, he may issue a show cause order to the respondent, with a copy to the division. The show cause order shall then be treated as a charge.

Section 17. Denial of Applications for Examination or Licensing. Any person who has been refused admission to an examination or who has been denied a license after achieving a minimum score on an examination for professional engineers or professional land surveyors shall be given written statement of board's reasons for denial and informing the applicant of his right to a hearing. That person may file with the executive director a written request for a hearing, setting out the reasons why the denial is contrary to fact or law and indicating whether he desires either a hearing under KRS Chapter 13B or an opportunity to plead the matter directly to the board. The executive director shall cause a hearing or appearance before the board to be scheduled, as directed by the applicant. An election to plead before the board shall constitute a waiver of a right to a hearing pursuant to KRS Chapter 13B.

Section 18. Any matter not covered by this administrative regulation, or which is in conflict with KRS Chapter 13B, shall be controlled by KRS Chapter 13B.

Section 19. Publication of Final Orders and Consent Decrees. From time to time, but at least annually, a summary of all final orders and consent decrees of the board shall be published in a forum selected by the board, identifying the respondent, the nature of the charges and the final disposition of the matter.

TED R. RICHARDSON, PE, PLS, Chairman

APPROVED BY AGENCY: January 18, 2001

FILED WITH LRC: January 22, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 201 KAR 18:133, Administrative Hearings, will be held on March 21, 2001, at 10 a.m. at Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky, 40601. Individuals interested in attending this hearing shall notify the Kentucky Board of Licensure for Professional Engineers and Land Surveyors in writing, by phone, FAX or e-mail by March 14, 2001. If no notification is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the administrative regulation. A transcript of the public hearing will not be made unless requested in writing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the new administrative regulation to: B. R. Salyer, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, Fax: (502) 573-6687, bud.salyer@mail.state.ky.us.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. R. Salyer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for administrative hearings before the board of licensure.

(b) The necessity of this administrative regulation: The enactment of KRS Chapter 13B governing procedures for administrative hearings created conflicts with the current regulation, 201 KAR 18:131, that could not be resolved with a simple amendment of the existing regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) requires the board to adopt and amend rules of procedure reasonably necessary for the regulation

of proceedings before it. This administrative regulation establishes those rules of procedure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide for the orderly disposition of matters requiring administrative hearings while insuring due process for those appearing before the board.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment; it is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 9,000 professional engineers and land surveyors, all of whom would be subject to these procedures should they appear before the board for an administrative hearing.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will not be a significant impact on the licensees. While the board already has an administrative regulation for the conduct of hearings, it is substantially obsolete as a result of KRS Chapter 13B. This administrative regulation merely bring the current regulation into compliance with KRS Chapter 13B.

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

(a) Initially: There will be no initial cost of implementation.

(b) On a continuing basis: There will be no continuing cost of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board receives its funding solely from license fees of engineers and land surveyors. However, there is not cost of implementation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require any additional fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all persons licensed by the board.

**KENTUCKY STATE BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
(Repealer)**

**201 KAR 18:141. Repeal of 201 KAR 18:140 and 201 KAR 18:131.**

RELATES TO: KRS 322.290(4), (11)

STATUTORY AUTHORITY: KRS 322.290(4), (11)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 18:140, Code of professional practice and conduct, and 201 KAR 18:131, Administrative hearings, are being repealed to be replaced by 201 KAR 18:133 and 201 KAR 18:142.

Section 1. 201 KAR 18:140, Code of professional practice and conduct, and 201 KAR 18:131, Administrative hearings, are repealed.

TED R. RICHARDSON, Chairman

APPROVED BY AGENCY: January 18, 2001

FILED WITH LRC: January 22, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 201 KAR 18:141, Repealer of 201 KAR 18:140, Code of professional practice and conduct, and 201 KAR 18:131, Administrative Hearings, will be held on March 21, 2001, at 10 a.m. at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky, 40601. Individuals interested in attending this hearing shall notify the Kentucky Board of Licensure for Professional Engineers and Land Surveyors in writing, by phone, FAX or e-mail by March 14, 2001. If no notification is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the administrative regulation. A transcript of the public hearing will not be made unless requested in writing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the new administrative regulation to: B. R. Salyer, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, Fax: (502) 573-6687, bud.salyer@mail.state.ky.us.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: B. R. Salyer, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 18:140, Code of professional practice and conduct, and 201 KAR 18:131, Administrative hearings.

(b) The necessity of this administrative regulation: The 2 existing administrative regulations must be repealed to make way for new administrative regulations. If not repealed, conflict will occur between the existing administrative regulations and the new administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) and (11) require the board to adopt a Code of Professional Practice and Conduct and procedures for administrative hearings. Changes in the nature of engineering and surveying practice demands a new Code of Professional Practice and Conduct and the enactment of KRS Chapter 13B necessitates the adoption of new administration hearing procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will avoid a conflict between old and new administrative regulations.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 9,000 professional engineers and land surveyors licensed in this Commonwealth, and to no other entity.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is no anticipated impact on the licensees governed by this administrative regulation. The new administrative regulations replace administrative regulations concerning the same subject.

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

(a) Initially: There is no cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency receives its funding through the license fees of engineers and land surveyors.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Neither this ad-



ministrative regulation nor the new administrative regulations will establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation applies equally to all engineers and land surveyors licensed by the board.

**KENTUCKY STATE BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
(New Administrative Regulation)**

**201 KAR 18:142. Code of professional practice and conduct.**

RELATES TO: KRS 322.290(11) –

STATUTORY AUTHORITY: KRS 322.290(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(11) requires the board to adopt and promulgate a code of professional practice and conduct, which shall be binding upon persons licensed under KRS Chapter 322, and which may be amended from time to time. Changes in the nature of engineering and land surveying practice, and the need to provide licensees a code which more fully meets the requirements of due process, require a new code and not merely a revision of the existing code. The function of this administrative regulation is to establish a new code of professional practice and conduct.

Section 1. Definitions. (1) "Conflict of interest" means any circumstance in which a licensee's personal or financial interest is contrary to the interests of the public, his employer, or current or past clients, or in which the interests of current or past clients are contrary to each other.

(2) "Direct supervisory control" in the practice of engineering means that an engineer must directly supervise and take responsibility for consultation, investigation, evaluation, planning, design and certification of an engineering project. Direct supervisory control by a licensee entails only that work performed by an employee as defined herein. A licensee may incorporate in his work product designs of manufactured or standard components developed by manufacturers, suppliers or professional or technical societies and associations. Technical support services, such as drafting, reproduction, calculations and computer functions, need not be performed in the licensee's office provided the service is performed by an employee as defined herein.

(3) "Direct supervisory control" in the practice of land surveying means that a licensee who certifies a work product must directly supervise and control the survey, including having client contact. Direct supervisory control by a licensee entails only that work performed by an employee as defined herein. While an employee may investigate the circumstances of a potential project, only a licensee may accept a land surveying assignment, negotiate the terms of the engagement, or acknowledge the scope of the work to be performed. When, in the professional land surveyor's reasonable judgment, his personal participation is not required in performing a particular aspect of a project, he may delegate such tasks to an employee, provided all work is actually reviewed by the licensee. Technical support services, such as drafting, reproduction, calculations and computer functions, need not be performed in the licensee's office provided the service is performed by an employee as defined herein. The need to make a site visit will be dictated by the nature, size and complexity of a project. However, the failure to make a site visit in a substantial percentage of surveys may be construed as a failure to exercise direct supervisory control.

(4) "Employee" means a person who works for a licensee or his employer for wages or a salary. It shall also include professional and technical support personnel contracted on a temporary or occasional basis, provided the compensation is paid by the licensee or his employer and not by a third party. This definition does not prohibit a licensee from using the services of an outside consultant or specialist whose fees are paid directly by the licensee's client.

(5) "Licensee" means any natural person licensed by the board to practice professional engineering or professional land surveying, or any business entity permitted under KRS 322.060.

(6) "Work product" means any engineering or land surveying plan, plat or document that is intended to represent activities conducted in the practice of engineering or land surveying.

Section 2. The engineer or land surveyor shall conduct his practice in order to protect the public health, safety, and welfare.

(1) The practice of professional engineering and land surveying is a privilege, and not a right.

(2) When a licensee's judgment is overruled and he has reason to believe the public health, safety or welfare may be endangered, he shall inform his employer or client of the possible consequences and notify appropriate authorities.

Section 3. A licensee shall issue all professional communications and work products in an objective and truthful manner.

(1) A licensee shall be objective and truthful in all professional reports, statements or testimony and shall include all material facts.

(2) When serving as an expert or technical witness before any tribunal, a licensee shall express an opinion only when it is founded on adequate knowledge of the facts in issue, on the basis of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of such testimony, and shall act with objectivity and impartiality. He shall not ignore or suppress a material fact.

(3) A licensee shall not issue a statement or opinion on professional matters connected with public policy unless the licensee has identified himself, has disclosed the identity of the party on whose behalf the licensee is speaking, and has disclosed any pecuniary interest the licensee may have in the matter.

(4) A licensee shall not maliciously injure the professional reputation, prospect, practice or employment of another licensee.

(5) A licensee shall not accept a contingency fee for serving as an expert witness before any tribunal.

Section 4. A licensee shall avoid conflicts of interest.

(1) When a reasonable possibility of a conflict of interest exists, a licensee shall promptly notify his employer, client or past client.

(2) A licensee shall not accept a valuable consideration from more than one (1) party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all affected parties.

(3) A licensee shall not solicit or accept a valuable consideration either for specifying materials or equipment, or from contractors, their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

(4) A licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement regarding the cost, quality or extent of services to be performed.

(5) A licensee shall not misrepresent his or his associates' professional qualifications or experience.

(6) A licensee serving as a member, advisor, or employee of a governmental body shall not participate in decisions with respect to professional services offered or provided by him or a business entity in which he is a principal, officer or employee, to that governmental body.

Section 5. A licensee shall solicit or accept engineering or land surveying work only on the basis of his or his firm's or associates' qualifications for the work offered.

(1) A licensee shall not offer or accept any valuable consideration in order to secure specific work, exclusive of commissions for securing salaried positions through employment agencies. This provision does not prohibit a licensee's participation in design-build projects.

(2) A licensee may advertise professional services provided such advertising is not self-laudatory or misleading.

Section 6. A licensee shall not knowingly associate with any person engaging in fraudulent, illegal or dishonest activities.

(1) A licensee shall not permit the use of his or his business entity's name by any person or business entity that he knows or has reason to believe is engaging in fraudulent, dishonest or illegal activities.

(2) A licensee shall not aid or abet the unlicensed practice of engineering or land surveying.

Section 7. A licensee shall perform his services only in the areas of his competence.

(1) A licensee shall undertake to perform professional assignments only when qualified by education or experience in the specific

technical field involved.

(2) A licensee may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those parts of the project in which he is competent. All other parts of the project shall be certified by qualified associates, consultants or employees.

(3) If a question of the competence of a licensee to perform a professional assignment in a specific technical field is an issue and cannot be otherwise resolved to the satisfaction of the board, the board, upon a majority vote or upon request by the licensee, may require him to satisfactorily complete an examination the board deems appropriate and relevant.

Section 8. Except as otherwise provided, a licensee shall not certify any work product dealing with subject matter in which he lacks competence by virtue of education or experience, nor to any work product not prepared by him or under his direct supervisory control.

(1) A professional engineer may review and certify the work product of another professional engineer if:

(a) The review and certification is made at the request of the other professional engineer;

(b) He does not remove or obliterate the identity of the other professional engineer;

(c) He performs and retains in his possession for not less than five (5) years all calculations and documents necessary to perform an adequate review; and

(d) He confirms that the other professional engineer was licensed at the time the work was created.

(2) When a professional engineer undertakes to review only a portion of the work product of another professional engineer, his certification shall clearly identify the portion reviewed.

(3) A professional engineer may modify the work product of another professional engineer, whether or not the project has been built, provided he retains in his possession for not less than five (5) years a record of his modifications.

(4) When a professional engineer modifies the work product of another professional engineer, his certification shall clearly identify, by words or graphics, that portion that was modified.

(5) A professional land surveyor may certify the work product of another professional land surveyor if:

(a) He notifies the other professional land surveyor of his intent to do so;

(b) He shared work experience and responsibility with the other professional land surveyor on the specific survey;

(c) He had personal knowledge of the work effort and work product at the time the survey was originally performed;

(d) He does not obliterate or remove the identity of the other professional land surveyor;

(e) He performs and retains in his possession for not less than five (5) years all calculations and documents necessary to perform an adequate review;

(f) He confirms that the other professional land surveyor was licensed at the time the survey was performed; and

(g) A professional, business or joint relationship existed with the other professional land surveyor at the time the survey was performed.

(6) When a professional land surveyor undertakes to review and certify only a portion of the work product of another professional land surveyor, his certification shall clearly identify the portion reviewed and certified.

Section 9. The professional engineer or professional land surveyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of his profession.

Section 10. If a licensee has knowledge or reason to believe that any person or other licensee is in violation of KRS Chapter 322 or any administrative regulation adopted by this board, he shall present such information to the board in writing and shall cooperate with the board in furnishing information within his knowledge.

TED R. RICHARDSON, Chairman

APPROVED BY AGENCY: January 18, 2001

FILED WITH LRC: January 22, 2001 at 3 p.m.

**PUBLIC HEARING:** A public hearing on administrative regulation 201 KAR 18:142, Code of professional practice and conduct, will be held on March 21, 2001, at 10 a.m. at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky, 40601. Individuals interested in attending this hearing shall notify the Kentucky Board of Licensure for Professional Engineers and Land Surveyors in writing, by phone, FAX or e-mail by March 14, 2001. If no notification is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the administrative regulation. A transcript of the public hearing will not be made unless requested in writing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the new administrative regulation to: B. R. Salyer, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Phone: (502) 573-2680, Fax: (502) 573-6687, bud.salyer@mail.state.ky.us.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. R. Salyer, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a new code of professional practice and conduct for professional engineers and land surveyors.

(b) The necessity of this administrative regulation: The technical changes in engineering and land surveying since the current code of professional practice and conduct was adopted in 1982 requires a new code that accounts for the current methods of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation addresses all requirements set out in KRS 322.290(11).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In addition to addressing traditional ethical concerns, this administrative regulation will more fully protect the public health, safety and welfare by enabling the board to police unethical practices that have been made possible by the computer.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to approximately 9,000 professional engineers and land surveyors licensed in this Commonwealth, and to no other entity.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is no anticipated impact on the licensees governed by this administrative regulation that is significantly different from the existing code of ethics. It will continue regulation of traditional methods of practice, but will prevent unethical practices that have been made possible by the computer.

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

(a) Initially: There is no cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency receives its funding through the license fees of engineers and land surveyors.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish and fees, nor will it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this

administrative regulation applies equally to all engineers and land surveyors licensed by the board.

**KENTUCKY BOARD OF NURSING  
(New Administrative Regulation)**

**201 KAR 20:460. Declaratory rulings.**

RELATES TO: KRS 314.105

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to implement the provisions of KRS 314.105 that was passed by the 2000 General Assembly.

Section 1. Definitions. (1) "Board" means the board of nursing.

(2) "Declaratory ruling" means a ruling by the board that answers the question before it.

(3) "Person" means an individual, an agency, association, corporation, or any other entity.

Section 2. Form of Petition. (1) Any person may file a petition with the Board of Nursing for a declaratory ruling pursuant to KRS 314.105.

(2) The petition shall be signed by one (1) or more persons, with each signer's mailing address and telephone number, and if available, fax number and email address, clearly indicated. If a person signs on behalf of a corporation or association, that fact shall also be indicated. The signer shall date the petition.

(3) The petition shall contain:

(a) A clear and concise statement of all relevant facts on which the ruling is requested;

(b) A citation and the relevant language of the specific statutes, administrative regulations, decisions, orders, or other written statements of law or policy whose applicability is questioned, and any other relevant law;

(c) The questions petitioner wants answered, stated clearly and concisely;

(d) The petitioner's desired answers to the questions and a summary of the rationale supporting the desired answers;

(e) Any supportive documentation or research; and

(f) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

Section 3. Consideration. (1) The board may schedule an informal meeting between the petitioner, any interested persons, and the board, a member of the board, or a member of the staff of the board, to discuss the question raised.

(2) In rendering its ruling, the board shall:

(a) Consider all materials submitted with the petition;

(b) Consider any relevant document, data, or other material; and

(c) Consider comments from the board's staff.

(3) The board may:

(a) Consult experts or other individuals as it deems necessary; and

(b) Require argument of the question or permit the introduction of evidence.

Section 4. Issuance of Ruling or Refusal to Issue Ruling. (1) The board shall issue a declaratory ruling in response to the petition, unless one (1) of the provisions of subsection (2) of this section applies.

(2) The board shall not issue a declaratory ruling if one (1) of the following reasons applies:

(a) The board does not have jurisdiction over the questions presented in the petition;

(b) The questions presented by the petition are also presented in a disciplinary case, or other board or judicial proceeding that may definitively decide them;

(c) The questions presented by the petition would more properly be resolved in a different type of proceeding;

(d) The facts or questions presented in the petition are unclear,

overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling;

(e) There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances;

(f) The petitioner requests the board to determine whether a statute is unconstitutional; or

(g) The board concludes that a ruling would not be in the public interest.

TENA PAYNE, President

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: February 13, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 23, 2001, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2001, 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 contract person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Tel: (502) 329-7009, Fax: (502) 696-3938, Email: [nathan.goldman@mail.state.ky.us](mailto:nathan.goldman@mail.state.ky.us).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Agency Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides procedures for the submission and consideration of declaratory rulings.

(b) The necessity of this administrative regulation: KRS 314.105

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 314.105

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will allow the board to implement KRS 314.105.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Unknown

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Any interested party may request such a declaratory ruling from the board.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase will be needed.

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

(9) TIERING: Is tiering applied? Tiering was not used since to do so would be unconstitutional.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)

**401 KAR 51:160. NOx requirements for large utility and industrial boilers.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published under the NOx SIP Call. This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the federal mandate.

**Section 1. Applicability.** This administrative regulation shall apply to NOx budget units that are electric-generating units or industrial boilers or turbines, except as provided in Section 2 of this administrative regulation.

**Section 2. Exemptions.** (1) Exemptions based on potential to emit. A unit shall be exempt from this administrative regulation if the owner or operator complies with this subsection.

(a) Permit requirements. The source shall have a permit issued by the cabinet containing conditions for the unit that:

1. Limit the unit's NOx emissions during each control period beginning in 2004 to twenty-five (25) tons or less; and
2. Are enforceable as a practical matter.

(b) Monitoring requirements. The following monitoring requirements shall be met for the unit:

1. If NOx emissions are controlled by limits on the hours of operation, monitoring shall not be required; or
2. If NOx emissions are controlled by permit limits other than limits on hours of operation, emissions shall be monitored by CEMS or parametric monitoring.

(c) Recordkeeping requirements. Records shall exist that demonstrate the unit did not emit more than twenty-five (25) tons of NOx during each control period beginning in 2004. Records shall consist of monitoring results or hours of operation, and shall be:

1. Maintained on site for five (5) years; and
2. Made available upon request to the cabinet or the U.S. EPA.

(d) Reporting requirements. By November 1 each year, beginning in 2004, the NOx budget unit owner or operator shall submit a report to the cabinet that demonstrates the unit's NOx emissions did not exceed twenty-five (25) tons during the control period for that year.

(2) Retired unit exemption.

(a) A NOx budget unit shall be exempt from the requirements in Sections 3 to 7 of this administrative regulation on the date that the unit is retired, if the following conditions are met:

1. Except as provided in paragraph (b) of this subsection, the retired unit shall not emit NOx on or after the day it is retired; and
2. Within thirty (30) days after the unit is retired, the NOx authorized account representative shall submit:

a. A letter to the cabinet and to the U.S. EPA describing the unit, the date of retirement, and the reason for retirement; and

b. An application for a permit revision that reflects the status of the retired unit pursuant to 401 KAR 52:020; and

3. Unless the unit has been physically removed, records to demonstrate that the unit has not been operated shall be:

a. Maintained on-site for five (5) years from the date of retirement; and

b. Made available to the cabinet or the U.S. EPA upon request.

(b) Operation of a retired unit shall not be resumed unless the owner or operator submits an application and receives a permit revision pursuant to 401 KAR 52:020 prior to commencing operation.

(c) A retired unit shall not be allowed to opt into 401 KAR 51:190, Banking and trading NOx allowances.

(d) NOx allowances made to a unit that later retires shall:

1. Remain with the unit until they are transferred or deducted; and
2. Cease to be allocated to the unit.

(3) The cabinet shall notify the U.S. EPA, in writing, of:

- (a) Units that are exempted under this section;
- (b) Permit changes that remove a limit specified in subsection (1)

of this section or render it no longer applicable; and

(c) Violation of a limit imposed in subsection (1) of this section.

**Section 3. Compliance Requirements.** (1) NOx budget emissions limitation requirements. Commencing with the later date of May 31, 2004, or the year the unit commences operation, the owner or operator of a NOx budget unit shall:

(a) Beginning May 31, 2004, and May 1 of each year thereafter, monitor the total NOx emissions during each control period as specified in 40 CFR 96.70 to 96.76; and

(b) By November 30 of each year, hold NOx allowances available for compliance deductions in an amount at least equal to the total NOx emissions during the control period as specified in 401 KAR 51:190.

(2) NOx allowance provisions. NOx allowances shall be held in, deducted from, or transferred among the NOx compliance, overdraft, and general accounts as specified in 401 KAR 51:190.

(a) NOx allowances shall not be deducted for compliance with subsection (1) of this section for a control period prior to the year for which the NOx allowances were allocated.

(b) If the U.S. EPA records the allocation, transfer, or deduction of NOx allowances from the compliance or overdraft account of a NOx budget source, this action shall:

1. Automatically amend and become part of the NOx budget portion of the source's permit; and
2. Require no further review.

(c) The owner or operator of a NOx budget unit having excess NOx emissions for each control period beginning in 2004, shall comply with 401 KAR 51:190.

(d) Allocated NOx allowances shall not constitute a property right.

(3) Recordkeeping and reporting requirements.

(a) The owner or operator of a NOx budget source shall maintain the following records:

1. The account certificate of representation for the source's NOx authorized account representative and documents validating the certificate;

2. Emissions monitoring information as specified in 40 CFR 96.70 to 96.76;

3. Copies of all reports, compliance certifications, and other submissions and records required by 401 KAR 51:190; and

4. Copies of documents used to complete permit revision applications or to demonstrate compliance with 401 KAR 51:190.

(b) These records shall be:

1. Used to demonstrate compliance with subsection (1) of this section;

2. Maintained on site for a period of five (5) years, unless a longer period is required by 40 CFR 96.70 to 96.76 or the cabinet requires an extended period for cause; and

3. Made available for inspection on request by the cabinet or the U.S. EPA.

(4) Computation of time.

(a) A time period scheduled to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) A time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) If the final day of a time period falls on a weekend or state or federal holiday, the time period shall be extended to the next business day.

Section 4. Allocation of NOx Allowances. NOx allowances for NOx budget units shall be allocated pursuant to this section.

(1) The total number of NOx allowances available for allocation shall be the number of NOx allowances assigned to Kentucky by the U.S. EPA and approved in Kentucky's State Implementation Plan (SIP).

(2) The total number of NOx allowances allocated by the cabinet shall be divided into separate pools as follows:

(a) The number of NOx allowances specified in Kentucky's approved SIP for electric generating units with:

1. Ninety-five (95) percent of this amount allocated for the allocation period beginning in 2004 to units that commence operation on or before May 1, 2001;

2. Five (5) percent of this amount allocated for the allocation period beginning in 2004 to units that commence operation after May 1, 2001, and before May 1, 2006;

3. Ninety-eight (98) percent of this amount allocated for each allocation period beginning with the 2007 to 2009 allocation period to units that commence operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period; and

4. Two (2) percent of this amount allocated for each allocation period beginning with the 2007 to 2009 allocation period to units that commence operation after May 1 of the year that is three (3) years before the first year of the applicable allocation period and on or before May 1 of the applicable control period; and

(b) The number of NOx allowances specified in Kentucky's approved SIP for industrial boilers or turbines with:

1. Ninety-eight (98) percent of this amount allocated for each allocation period to units that commence operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period; and

2. Two (2) percent of this amount allocated for each allocation period to NOx budget units that commence operation after May 1 of the year that is three (3) years before the first year of the applicable allocation period and on or before May 1 of the applicable control period.

(3) NOx allowances allocated from the pools specified in subsection (2)(a)2, (a)4, and (b)2 shall:

(a) Be reallocated by the cabinet annually during the allocation period among NOx budget units operating during the applicable control; and

(b) Shall be returned to the cabinet by a NOx budget unit not operating during the control period.

(4) NOx allowances that are returned to or not allocated by the cabinet during an allocation period from a pool specified in subsection (2)(a)2, 4 and (b)2 of this section shall:

(a) Be held by the cabinet until the end of the allocation period; and

(b) For that allocation period, be distributed to units included in the applicable pool as specified in subsection (2)(a)1, 3, or (b)1 of this section.

(5) For allocation purposes, heat input of a NOx budget unit shall be determined from:

(a) If available, the most recent ozone season heat input data as required under the Acid Rain Program; or

(b) If the data specified in paragraph (a) of this subsection is not available, the unit's expected actual ozone season heat input based on actual utilization data of similar sources.

(6) The cabinet shall allocate NOx allowances to each NOx budget unit in an amount equal to the result obtained by:

(a) Multiplying 0.15 lb/MMBTU, or the unit's permitted NOx limit (expressed as lb/MMBTU), whichever is less, by the heat input determined in subsection (3) of this section;

(b) Dividing the resulting product by the sum of the heat inputs for all Kentucky NOx budget units in the appropriate pool as determined in subsections (2) and (3) of this section;

(c) Multiplying the resulting quotient by the total number of NOx allowances available for distribution in the applicable pool; and

(d) Rounding the result to the nearest whole NOx allowance as

appropriate.

(7) NOx allowances created pursuant to 401 KAR 51:180 for early reduction credits or emergency compliance shall not be included in this allocation.

Section 5. Duration and Reallocation of NOx Allowances. (1) NOx allowances allocated to a NOx budget unit pursuant to Section 4 of this administrative regulation shall have a duration of:

(a) One (1) allocation period; or

(b) The remaining term of an allocation period if the unit commences operation during the allocation period.

(2) The cabinet shall allocate the NOx allowances for NOx budget units in each subsequent allocation period using the method described in Section 4 of this administrative regulation.

(3) A NOx budget unit that commences operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period shall be included in the applicable allocation pool as specified in Section 4(2)(a)1, 3, or (b)2.

(4) If the U.S. EPA changes the number of NOx allowances assigned to Kentucky before the end of an allocation period, the cabinet shall reallocate the NOx allowances prior to the beginning of the next control period in the same ratio as the original allocation for that period.

(5) The cabinet shall notify the U.S. EPA and NOx budget sources of the NOx allowances to be allocated pursuant to this section and Section 4 of this administrative regulation:

(a) For units that commence operation on or before May 1 of the year that is three (3) years before the first year of the applicable allocation period:

1. Not later than sixty (60) days after the effective date of this administrative regulation for the allocation period beginning in 2004; and

2. By April 1 of the year that is three (3) years prior to the next allocation period; and

(b) By May 1 of each year, beginning in 2004, for units that commence operation after May 1 of the year that is three (3) years before the first year of the applicable allocation period and on or before May 1 of the applicable control period.

(6) Excess allowances may be banked and traded according to 401 KAR 51:190.

Section 6. Application for NOx Budget Permit or Permit Revision.

(1) The NOx authorized account representative of a NOx budget source shall submit an application to revise the source's permit pursuant to 401 KAR 52:020 and this section.

(2) The application shall include the following information:

(a) The Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration;

(b) Identification of:

1. Each NOx budget unit at the source;

2. Each retired unit; and

3. Each unit exempted pursuant to Section 2(1) of this administrative regulation;

(c) A statement that explains if the unit is:

1. A unit described in Section 1 of this administrative regulation; or

2. An opt-in unit pursuant to 401 KAR 51:195;

(d) The applicable requirements of Section 3 of this administrative regulation; and

(e) For opt-in units, the following certification statement signed by the NOx authorized account representative: "I certify that each unit for which this permit application is submitted, pursuant to the opt-in provisions of 401 KAR 51:195, is operating; is not a NOx budget unit pursuant to 401 KAR 51:160, Section 1; and is not covered by a retired exemption unit that is in effect pursuant to 401 KAR 51:160, Section 2(2)."

Section 7. Compliance. (1) Compliance certification. On or before November 30 each year, beginning in 2004, the NOx authorized account representative shall submit a compliance certification report to the cabinet and to the U.S. EPA pursuant to 401 KAR 51:190.

(2) Reporting to the cabinet. Reports that are required to be submitted to the cabinet shall be mailed to:

1. Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and

2. To the appropriate Regional Office of the Division for Air Quality listed in Section 8(2) of this administrative regulation.

Section 8. Incorporation by Reference. (1) 40 CFR 96.70 to 96.76, "Monitoring and Reporting," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382; and

(b) The appropriate regional office of the Division for Air Quality as follows:

1. Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

2. Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

3. Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6657;

4. Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

5. London Regional Office, 875 South Main Street, London, Kentucky 40741, (606) 878-0157;

6. Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

7. Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) and Federal Register (Fed. Reg.) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed administrative regulation requires the reduction of nitrogen oxide (NOx) emissions from large utility and industrial boilers in order to comply with the federal mandate commonly known as the NOx SIP Call.

(b) The necessity of this administrative regulation: Kentucky is one of 19 states that is being required by the U.S. EPA to lower NOx emissions. The proposed administrative regulation is being promulgated to comply with this mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to

promulgate administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will result in the reduction of NOx emissions from large utility and industrial boilers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet is required to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is currently no administrative regulation that would allow Kentucky to achieve the NOx emissions reductions that have been mandated by the U.S. EPA. This proposed administrative regulation provides the methods required for achieving the mandated emissions reductions from large utility and industrial boilers.

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

(a) How the amendment will change this existing administrative regulation: This is not an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This is not an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 50 entities, including electric utilities, sources with large industrial boilers, and cement kilns will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners or operators of electric generating utilities and large industrial boilers will be required to reduce NOx emissions from units subject to this administrative regulation to .15 pounds per million BTU generated. These sources will also be required to hold sufficient NOx allowances to meet the compliance requirements. Based on federal estimates, the cost for these reductions will range between \$1,500 and \$2,000 per ton.

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

(a) Initially: The division will not incur any additional costs to implement this regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the proposed administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The proposed administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The cabinet has designed this administrative regulation so that it is applicable only to the largest sources (i.e., units having a heat input of 250 million BTU or higher, and units serving an electric generator of 25 megawatts or greater). Smaller units remain unaffected by this administrative regulation unless they choose to opt-in to the trading program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 50 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000) and 40 CFR Part 96, as published in the CFR, July 1, 1999. The federal Clean Air Act (42 USC 7401 to 7671q) requires each state to have an implementation plan that achieves and maintains the National Ambient Air Quality Standards (NAAQS). It also provides the U.S. EPA with authority to assess the adequacy of the State Implementation Plans (SIPs). If the U.S. EPA finds a SIP to be



inadequate, it may provide an opportunity for the state to amend the plan to make it adequate or it may replace the plan with a Federal Implementation Plan (FIP). The U.S. EPA found the Kentucky SIP for achieving and maintaining the NAAQS for ozone (and the plans of 19 other eastern and midwestern states) to be inadequate. In the NOx SIP Call, the U.S. EPA has provided Kentucky and the other states an opportunity to amend their SIPs and has drafted a Federal Implementation Plan to be imposed if a SIP is not adequately revised.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reduction that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

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 will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not 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 what unit, part or division of local government this administrative regulation will affect. This administrative regulation would affect any unit, part or division of local government operating a unit that meets the applicability determination of Section 1 of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect any government-owned generator with a nameplate capacity greater than 25 MWe that sells electricity; and any other unit with a maximum design heat input greater than 250 million BTU/hr.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed to be less costly than the Federal Implementation Plan.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 51:170. NOx requirements for cement kilns.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abate-

ment, and control of air pollution. This administrative regulation provides for the regional control of nitrogen oxides (NOx) emissions from portland cement manufacturing plants pursuant to the federal mandate published under the NOx SIP Call. This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to a portland cement manufacturing plant with process rates, on or after January 1, 1995, equal to or greater than:

- (1) Twelve (12) tons of clinker per hour for a long dry kiln;
- (2) Ten (10) tons of clinker per hour for a long wet kiln;
- (3) Sixteen (16) tons of clinker per hour for a preheater kiln; or
- (4) Twenty-two (22) tons of clinker per hour for a precalciner or preheater/precalciner kiln.

Section 2. Standard for Kilns. (1) On and after May 31, 2004, the owner or operator of a kiln specified in Section 1 of this administrative regulation shall, during a control period, operate the kiln so that NOx emissions do not exceed six and nine-tenths (6.9) lbs. per ton of clinker averaged over a thirty (30) day rolling period.

(2) The requirements in subsection (1) of this section shall not apply during:

- (a) Periods of start-up, shutdown, or malfunction that do not exceed thirty-six (36) consecutive hours; and
- (b) Regularly scheduled maintenance activities.

Section 3. Reporting, Monitoring, and Recordkeeping for Kilns. (1) Reporting requirements. The owner or operator of a kiln specified in Section 1 of this administrative regulation shall submit the following reports to the cabinet at the locations specified in Section 4 of this administrative regulation:

(a) By May 31, 2004, a report that includes:

1. The number and types of kilns;
2. The name and address of the plant where the kilns are located; and
3. The name and telephone number of the person responsible for demonstrating that the kiln is in compliance.

(b) By October 31 each year, beginning in 2004, a report that documents the total NOx emissions from the kiln during the control period.

(2) Monitoring requirements.

(a) On or before April 1 of each year, beginning in 2004, the owner or operator shall demonstrate compliance by conducting a performance test pursuant to 40 CFR 60, Appendix A, Methods 7, 7A, 7C, 7D, or 7E.

(b) The requirement in paragraph (a) of this subsection shall not apply if the kiln is operated during a control period with:

1. CEMS for NOx which meets the applicable requirements of 40 CFR Part 60, Subpart A and Appendix B; or
2. A parametric monitoring system approved by the cabinet prior to implementation.

(c) The CEMS for NOx or parametric monitoring system, if used, shall be operated and maintained in accordance with an on-site operating plan approved by the cabinet.

(3) Recordkeeping requirements. An owner or operator of a kiln specified in Section 1 of this administrative regulation shall maintain all records necessary to demonstrate compliance with the standards in Section 2 of this administrative regulation for a period of two (2) years. These records shall:

- (a) Be kept at the facility where the kiln is located;
- (b) Be made available to the cabinet or the U.S. EPA upon request; and
- (c) Contain the following information:
  1. Emissions, in pounds of NOx per ton of clinker, from the kiln;
  2. The results of all performance tests;
  3. Daily production records; and
  4. The date, time, and duration of all startups, shutdowns, or malfunctions in the operation of the kiln or emissions monitoring equipment.

Section 4. Reporting to the Cabinet. Reports required to be submitted to the cabinet shall be mailed to:

(1) Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and

(2) To the appropriate Regional Office of the Division for Air Quality as follows:

(a) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(b) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(c) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(d) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(e) London Regional Office, 875 South Main Street, London, Kentucky 40741, (606) 878-0157;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

**PUBLIC HEARING:** A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed administrative regulation requires the reduction of nitrogen oxide (NOx) emissions from cement kilns in order to comply with the federal mandate commonly known as the NOx SIP Call.

(b) The necessity of this administrative regulation: Kentucky is one of 19 states that is being required to lower NOx emissions by the U.S. Environmental Protection Agency (U.S. EPA). The proposed administrative regulation is being promulgated to comply with this mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will result in the reduction of NOx emissions from cement kilns.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet is promulgating this administrative regulation in conjunction with other administrative regulations that will reduce NOx emissions from electric utilities and industries operating large boilers or turbines to meet the requirements of the federal NOx SIP Call.

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

(a) How the amendment will change this existing administrative regulation: This is not an existing administrative regulation.

(b) The necessity of the amendment to this administrative regula-

tion: This is not an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This is not an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There is only one known cement kiln in Kentucky that will be subject to this proposed administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Cement kilns will be required to reduce NOx emissions by 30%. Based on federal estimates, the cost for this reduction will range between \$1,500 and \$2,000 per ton of NOx emissions.

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

(a) Initially: The division will not incur any additional costs to implement this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the proposed administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The proposed administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) **TIERING:** Is tiering applied? Yes. Tiering is applied. The cabinet has designed this administrative regulation so that it is applicable only to the largest sources (units emitting one ton or more of NOx per day during the ozone season). Smaller units remain unaffected by this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 63 FR 57356 (October 27, 1998) as amended at 65 FR 11222 (March 2, 2000). The Clean Air Act (42 USC 7401 to 7671q) requires each state to have an implementation plan that achieves and maintains the National Ambient Air Quality Standards (NAAQS). It also provides the U.S. EPA with authority to assess the adequacy of the State Implementation Plan (SIP). If the U.S. EPA finds a SIP to be inadequate, it may provide an opportunity for the state to amend the plan to make it adequate or it may replace the plan with a Federal Implementation Plan (FIP). The U.S. EPA found the Kentucky SIP for achieving and maintaining the NAAQS for ozone (and the plans of 19 other eastern states) to be inadequate. The U.S. EPA has provided Kentucky and the other states an opportunity to amend their SIPs. It also has drafted a FIP to be imposed if SIPs are not adequately revised.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reductions that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

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 will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or addi-

tional or different responsibilities or requirements. Stricter standards and requirements are not 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? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 51:180. NOx credits for early reduction and emergency.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the distribution of NOx allowances from a compliance supplement pool allocated to Kentucky by the U.S. EPA for sources that reduce nitrogen oxides (NOx) emissions before the compliance deadline of the federal mandate published under the NOx SIP Call. It also provides for setting aside unused credits to assist sources that are unable to meet the compliance deadline. This administrative regulation is not more stringent nor otherwise different than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to a NOx budget unit in Kentucky.

Section 2. Procurement and Use of Early Reduction Credits (ERCs). (1) ERCs may be earned for reductions in NOx emissions achieved during the 2002 and 2003 control periods.

(2) NOx allowances given for earned ERCs may be deducted for compliance with NOx emission standards in 401 KAR 51:160 only during the 2004 and 2005 control periods.

(3) ERCs shall not be earned for reductions that are required to meet an applicable requirement.

Section 3. Initial Allocation of ERCs. (1) The cabinet shall provide an initial allocation of ERCs to each NOx budget unit. This allocation shall represent the maximum number of credits the unit may earn.

(2) The compliance supplement pool shall be divided into separate pools based on the ratio of the reductions required from each group to the total reductions required from both groups multiplied by

the number of ERCs in the compliance supplement pool. This yields the following pools:

(a) A utility pool of 12,844 ERCs for electric generating units; and

(b) An industry pool of 676 ERCs for industrial boilers or turbines.

(3) The cabinet shall determine the maximum credits that may be earned by a NOx budget unit as follows:

(a) To determine the maximum ERCs a unit may earn, the reductions required from the NOx budget unit by the U.S. EPA in determining the total NOx budget for Kentucky:

1. Shall be divided by the total reductions required from that group; and

2. The resulting quotient shall be multiplied by the ERCs in the group supplement pool.

(b) The results of these computations shall be provided to NOx budget sources for each NOx budget unit within sixty (60) days following the effective date of this administrative regulation.

Section 4. Final Allocation of ERCs. (1) The final allocation of ERCs shall be made based on the actual reductions achieved for each NOx budget unit during the 2002 and 2003 control periods compared to the unit's actual (baseline) emissions during the 2001 control period.

(2) ERCs shall be granted only for reductions that are monitored pursuant to Section 6 of this administrative regulation and reported pursuant to Section 7 of this administrative regulation.

(3) ERCs shall be discounted for reductions made above 0.25 lbs./MMBTU/hr according to the following:

(a) For each ton of NOx reductions achieved down to and including 0.25 lbs./MMBTU/hr, the unit shall receive one-fourth (1/4) credit.

(b) For each ton of NOx reductions achieved below 0.25 lbs./MMBTU/hr, the unit shall receive one (1) credit.

(4) ERCs shall be rounded to the nearest whole number and distributed in the form of NOx allowances for one (1) ton of NOx emissions.

(a) One (1) NOx allowance shall be distributed for each ERC earned until the maximum specified in Section 3(3) of this administrative regulation is reached.

(b) NOx allowances shall be distributed on or before May 31, 2004.

(c) The cabinet shall notify the U.S. EPA of the final allocation on or before May 31, 2004.

Section 5. NOx Credits for Emergency Use. Credits that remain in the compliance supplement pools, after the final allocation is made pursuant to Section 4 of this administrative regulation, shall be used by the cabinet to assist sources that are unable to meet the compliance deadline in 401 KAR 51:160 according to the following restrictions:

(1) ERCs remaining in the utility pool shall only be used to assist electric generating units and ERCs remaining in the industry pool shall only be used to assist industrial boilers or turbines.

(2) Credits shall be issued by the cabinet to extend the compliance deadline only for sources that meet the following conditions:

(a) Electric generating units for which meeting the compliance deadline would seriously jeopardize the reliability of the electric supply, and for which it was not feasible to import electricity from other sources in order to meet the deadline;

(b) Industrial boilers and turbines for which meeting the compliance deadline would create an undue risk comparable to that for utility sources in paragraph (a) of this subsection; and

(c) Sources able to demonstrate that it was not possible to acquire sufficient NOx allowances to meet the compliance deadline by:

1. Generating ERCs;

2. Acquiring ERCs from other sources; or

3. Acquiring NOx allowances from the NOx trading program.

Section 6. Monitoring Requirements. (1) Monitoring shall be performed on a NOx budget unit for which early reduction credit is to be obtained during the 2001 control period and each subsequent control period during which reductions will occur.

(2) Units shall be monitored in accordance with 40 CFR 96.70 to 96.76.

Section 7. Reporting Requirements. (1) The owner or operator of a NOx budget source that achieves early reductions pursuant to this administrative regulation shall submit a report to the cabinet on or before November 30, 2002 and November 30, 2003 (if reductions are achieved in both years) documenting the actual reductions achieved by each NOx budget unit during each control period compared to the unit's actual emissions during the 2001 control period. These reports shall contain the following information, for each NOx budget unit:

- (a) Identification and location of the unit that achieved reductions;
- (b) The maximum design heat input for the unit, expressed in MMBTU/hr;
- (c) For the 2001 control period and each control period during which emissions are achieved:
  - 1. The total hours of operation;
  - 2. The total NOx emissions, in tons;
  - 3. The average NOx emission rate, in lbs./MMBTU/hr;
  - 4. The maximum allowable NOx emission rate, based on the most stringent applicable requirement, in lbs./MMBTU/hr; and
  - 5. Calculations showing the tons of NOx reductions above and below 0.25 lbs./MMBTU/hr.

(2) The report required in subsection (1) of this section shall be signed by the owner or operator of the NOx budget source and submitted to:

(a) Manager, Permit Review Branch, Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and

(b) The appropriate regional office of the Division for Air Quality as follows:

- 1. Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;
- 2. Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
- 3. Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;
- 4. Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
- 5. London Regional Office, 875 South Main Street, London, Kentucky 40741, (606) 878-0157;
- 6. Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; or
- 7. Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed ad-

ministrative regulation provides for the distribution of credits and allowances from a compliance supplement pool to sources that reduce nitrogen oxide (NOx) emissions prior to the compliance deadline. It also provides for the distribution of unused allowances to sources that are unable to achieve mandated NOx emissions reductions by the compliance deadline.

(b) The necessity of this administrative regulation: Kentucky is one of 19 states that is being required by the U.S. Environmental Protection Agency to lower NOx emissions. This federal mandate, commonly referred to as the NOx SIP Call, allows affected states the option to issue early reduction credits and emergency allowances. The early reduction credits will provide affected sources an incentive to achieve NOx reductions earlier than required. The allowances will be used to assist sources in attaining their required emissions reductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will result in an earlier reduction of NOx emissions than will be required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet is required to prescribe administrative regulations for the prevention, abatement, and control of air pollution. Providing an incentive to reduce NOx emissions earlier than required will positively impact human health and the environment, and it will help sources to meet mandated NOx emission reductions during the 2004 and 2005 control periods.

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

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

This is not an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This is not an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately fifty entities, including electric utilities, sources with large industrial boilers, and cement kilns will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This proposed administrative regulation will not impose any new requirements on any source. Reducing NOx emissions earlier than required is strictly voluntary, and the opportunity to receive allowances to assist in meeting mandated NOx emissions is a benefit to affected sources.

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

(a) Initially: The division will not incur any additional costs to implement this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the proposed administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The proposed administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The cabinet has designed this administrative regulation so that it is applicable only to the largest sources (i.e., units having a heat input of 250 million BTU or higher, and units serving an electric generator of 25 megawatts or greater).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation contains a portion of the federal mandate which is optional for states. The federal mandate (NOx SIP Call) in pertinent part is found at 40 CFR 51.121 as amended at 65 Fed. Reg. 11222 (March 2, 2000), 40 CFR 51.122, and 40 CFR Part 96.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal findings and draft FIP prescribe the overall NOx emission reduction that each state must achieve. Although the U.S. EPA has proposed a plan for reducing the emissions that it considers to be the most cost effective, each state is required only to show that its plan will reliably and demonstrably achieve the mandatory reduction, and that the plan can be enforced.

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 will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not 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 what unit, part or division of local government this administrative regulation will affect. This administrative regulation would affect any municipal electric generating unit used to generate 25 megawatts or more of electricity, some of which is offered for sale, if the source chooses to participate in the early reduction program.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect any government-owned service that participates in the early reduction program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed to decrease costs of compliance with the NOx SIP Call for Kentucky sources.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 51:190. Banking and trading NOx allowances.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the federal regulation that establishes a program

for banking and trading of emission allowances to reduce nitrogen oxides (NOx) emissions under the federal NOx SIP Call. This administrative regulation is not more stringent nor otherwise different than the provisions of the federal mandate.

Section 1. For purposes of 40 CFR 96.10 to 96.14, 96.30, 96.31, 96.50 to 96.55 (b), 96.56 to 96.57, 96.60 to 96.62:

(1) The administrator shall be the Administrator of the U.S. EPA;

(2) The permitting authority shall be the cabinet;

(3) The citations, Subpart E and 40 CFR 96.42(e) shall be 401 KAR 51:160, NOx requirements for large utility and industrial boilers; and

(4) The citation Subpart I shall be 401 KAR 51:195, NOx opt-in provisions.

Section 2. Applicability. NOx budget units participating in the NOx Budget Trading Program shall comply with the following requirements, which are incorporated by reference in Section 3 of this administrative regulation:

(1) 40 CFR 96.10 to 96.14;

(2) 40 CFR 96.30 to 96.31;

(3) 40 CFR 96.50 to 96.55(b) and 96.56 to 96.57; and

(4) 40 CFR 96.60 to 96.62.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 96.10 to 96.14, "NOx Authorized Account Representative for NOx Budget Sources," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999;

(b) 40 CFR 96.30 to 96.31, "Compliance Certification," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999;

(c) 40 CFR 96.50 to 96.55(b) and 96.56 to 96.57, "NOx Allowance Tracking System," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999; and

(d) 40 CFR 96.60 to 96.62, "NOx Allowance Transfers," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 South Main Street, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003 (270) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) and the Federal Register (Fed. Reg.) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the

hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502)-573-3382 fax: (502) 573-3787.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed administrative regulation establishes a NOx allowance banking and trading program.

(b) The necessity of this administrative regulation: Kentucky is one of 19 states that is being required to lower nitrogen oxides (NOx) emissions by the U.S. Environmental Protection Agency. The establishment of a banking and trading program will assist Kentucky sources in meeting their required NOx reduction by establishing a method for purchasing excess allowances from sources who have achieved their required reduction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will provide an additional means for achieving federally mandated NOx reductions in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed administrative regulation provides a means for individual sources to attain their required NOx reductions, which will allow Kentucky as a whole to meet its required NOx reduction.

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

(a) How the amendment will change this existing administrative regulation: This is not an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This is not an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 50 entities, including electric utilities, sources with large industrial boilers, and cement kilns will be affected by this administrative regulation. Establishing a program for the banking and trading of NOx allowances will assist these sources in achieving mandated NOx emissions reductions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This proposed administrative regulation will not impose any new requirements on any source. Participation in the NOx allowance banking and trading program is strictly voluntary.

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

(a) Initially: The division will not incur any additional costs to implement this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the proposed administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The proposed administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. There is no tiering contained in the federal regulation. Any source subject to the NOx SIP Call can elect to participate in the NOx allowance banking and trading program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation contains a portion of the federal mandate which is optional for states. The federal mandate (NOx SIP Call) in pertinent part is found at 40 CFR 51.121 as amended at 65 Fed. Reg. 11222 (March 2, 2000), 40 CFR 51.122, and 40 CFR Part 96.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. This portion of the federal mandate, which is optional for states, enables sources to trade and bank NOx allowances on the national level.

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 imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not 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 what unit, part or division of local government this administrative regulation will affect. This administrative regulation may affect a local government if it owns an electric utility.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to electric service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The effect on current revenues is unknown.

Expenditures (+/-): The effect on current expenditures is unknown.

Other Explanation: This administrative regulation enables sources to participate in a trading and banking program for nitrogen oxides (NOx) allowances on the national level. The trading and banking program was designed by the U. S. Environmental Protection Agency to help reduce the cost of complying with the NOx SIP Call.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 51:195. NOx opt-in provisions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19,



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75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410, 7661  
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20.110, 224.20-120, 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 51.122, 72.2, 75.1, 75.2, 75.4, 75.11 to 75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 USC 7410, 7661

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes provisions for individual sources to opt into the NOx Budget Trading Program. This administrative regulation is not more stringent nor otherwise different than the provisions of the federal mandate.

Section 1. For purposes of 40 CFR 96.80 to 96.88:

- (1) The administrator shall be the Administrator of the U.S. EPA;
- (2) The permitting authority shall be the cabinet;
- (3) The citations Subpart E, 96.4, 96.5, and 96.42, shall be 401 KAR 51:160;
- (4) The citations 96.20, 96.21(c), 96.22, and 96.23, shall be 401 KAR Chapter 52; and
- (5) Unit shall be affected facility, except the term NOx budget unit shall remain NOx budget unit and the term retired unit shall remain retired unit.
- (6) The citation Subparts A through H shall be 401 KAR 51:001, 51:160, 51:170, 51:180, and 51:190.

Section 2. Applicability. Affected facilities that opt into the NOx Budget Trading Program shall comply with the requirements of 40 CFR 96.80 to 96.88, which is incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) 40 CFR 96.80 to 96.88, "Individual Unit Opt-ins," as published in the Code of Federal Regulations, 40 CFR Part 96, July 1, 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;
- (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (270) 746-7475;
- (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky, 41042, (859) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
- (f) London Regional Office, 875 South Main Street, London, Kentucky, 40741, (606)-878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (270) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (270) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) and the Federal Register (Fed. Reg) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: January 24, 2001

FILED WITH LRC: January 24, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 26, 2001, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 19, 2001, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing,

you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Telephone: (502) 573-3382 fax: (502) 573-3787.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed administrative regulation contains provisions for sources that choose to participate in the NOx allowance banking and trading program.

(b) The necessity of this administrative regulation: Kentucky is one of 19 states that is being required to lower nitrogen oxides (NOx) emissions by the U.S. Environmental Protection Agency. The establishment of a banking and trading program will assist Kentucky sources in meeting their required NOx reduction by establishing a method for purchasing excess allowances from sources that have achieved their required reduction. This proposed regulation contains the provisions to be followed for sources that are subject to the NOx Sip Call, but are not included in the banking and trading program, to voluntarily participate in that program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will provide an additional means for achieving federally mandated NOx reductions in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed administrative regulation provides a means for individual sources to attain their required NOx reductions, which will allow Kentucky as a whole to meet its required NOx reduction.

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

(a) How the amendment will change this existing administrative regulation: This is not an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an existing administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This is not an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 50 Kentucky sources will be required to reduce their NOx emissions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This proposed administrative regulation will not impose any new requirements on any source. Participation in the NOx allowance banking and trading program is strictly voluntary.

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

(a) Initially: The division will not incur any additional costs to implement this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the proposed administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the proposed administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The proposed administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. There is no tiering contained in the federal regulation. Any source subject to the NOx SIP Call can elect to participate in the NOx allowance banking and trading program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation contains a portion of the federal mandate which is optional for states. The federal mandate (NOx SIP Call) in pertinent part is found at 40 CFR 51.121 as amended at 65 FR 11222 (March 2, 2000), 40 CFR 51.122, and 40 CFR Part 96.

2. State compliance standards. There are no state compliance standards other than those contained in this proposed administrative regulation, which incorporates the federal rulemaking by reference.

3. Minimum or uniform standards contained in the federal mandate. This portion of the federal rulemaking, which is optional for states, enables sources to opt into the trading and banking program for NOx allowances on the national level.

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 imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not 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 what unit, part or division of local government this administrative regulation will affect. This administrative regulation may affect a local government if it owns an electric utility.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to electric service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation enables sources to opt into a trading and banking program for NOx allowances on the national level. The trading and banking program was designed by the U.S. EPA to help reduce the cost of complying with the NOx SIP Call.

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Vehicle Licensing (New Administrative Regulation)

601 KAR 2:030. Ignition interlock devices; the surrendering of license plates.

RELATES TO: KRS 189A.085, 189A.340, 189A.345, 57 FR 11772-11787 (April 7, 1992)

STATUTORY AUTHORITY: KRS 189A.085, 189A.340, 189A.345  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.085 states that, after a license plate suspension by a judge pursuant to

that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public.

Section 1. Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify all motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, provided the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(2) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(3) The court shall return all confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of all confiscated license plates.

(4) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;

2. Record results of the alcohol concentration test;

3. Record how long the vehicle is operated; and

4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;

2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;

3. That retests occur during operation of the vehicle; and  
4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

1. If the retest is not performed; or  
2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:

(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and  
(b) Be used in accordance with the manufacturer's instructions.

(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and calibration;  
2. Dates of activity;  
3. Value and type of standard used;  
4. Unit type and identification number of the ignition interlock device checked; and

5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.

(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES C. CODELL, III, Secretary  
ED LOGSDON, Commissioner

APPROVED BY AGENCY: January 22, 2001

FILED WITH LRC: January 25, 2001 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held March 22, 2001, 10 a.m., local prevailing time, in the Transportation Cabinet, 1st floor, Training Rooms A and B, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

Persons wishing to attend this meeting must notify this agency in writing by, March 15, 2001. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comments hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by March 22, 2001. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on March 22, 2001. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Holland B. Spade, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holland B. Spade

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides procedures for cancellation of license registration of operators pursuant to court order. It also sets standards for interlock devices and manufacturers, installers, and servicers of those devices and provides a procedure pursuant to which they may be placed on the approved Transportation Cabinet list.

(b) The necessity of this administrative regulation: To provide operators and agencies affected procedural guidelines for implementation of court orders requiring license plate suspension or installation of interlock devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It adopts the standards set forth in the statutes and provides procedures for performing statutory obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation coordinates the obligation of the courts, the interlock system providers, and the Division of Driver Licensing.

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

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

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

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

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

(3) List and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: Circuit Court Clerks, Judges, County Clerks, Transportation Cabinet, and citizens convicted of DUI.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. They will have a procedure to follow for implementation of court orders and reinstatement of licenses after the suspension period.

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

(a) Initially: Estimated cost of \$5000.

(b) On a continuing basis: \$1,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None known.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None known.

(9) TIERING: Is tiering applied? No. Tiering is applicable within DUI penalties but this administrative regulation is equally applied to all persons who have reached a certain violation level.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Physical Health**  
**(New Administrative Regulation)**

**907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.**

RELATES TO: KRS 205.520, 42 CFR 424.57, 440.230, 441 Subpart B, 42 USC 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560, 42 USC 1396a, b, d

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 provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Certificate of medical necessity" or "CMN" means a form or letter required by the Department for Medicaid Services to document medical necessity for durable medical equipment, medical supplies, prosthetics, and orthotics.

(2) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the Kentucky Medicaid Program.

(3) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient. It does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "DMERC" means durable medical equipment regional carrier.

(7) "Durable medical equipment" or "DME" means equipment which:

- (a) Withstands repeated use;
  - (b) Is primarily and customarily used to serve a medical purpose;
  - (c) Is generally not useful to a person in the absence of an illness or injury; and
  - (d) Is appropriate for use in the home.
- (8) "HCFA" means the Health Care Financing Administration.
- (9) "HCPCS" means the HCFA Common Procedure Coding System.

(10) "Home" means a place where the recipient resides excluding:

- (a) A nursing facility;
- (b) A hospital;
- (c) An intermediate care facility for the mentally retarded (ICF-MR); or
- (d) An institution for individuals with a mental disease (IMD) as defined in 42 USC 1396d(i).

(11) "Invoice price" means an itemized account of charges that are billed to a supplier by a manufacturer or distributor for goods or services provided.

(12) "Medicaid DME Program Fee Schedule" means a list, located at <http://chs.state.ky.us/dms>, containing the current Medicaid maximum allowable amount established by the department for a designated item of durable medical equipment, a prosthetic, an orthotic, or a medical supply covered by Medicaid.

(13) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

- (a) Provided in accordance with 42 CFR 440.230;
- (b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
- (c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;
- (d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;
- (e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;
- (f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and
- (g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR 441 Subpart B, for recipients under twenty-one (21) years of age.

(14) "Medical supply" means an item that is:

- (a) Consumable;
- (b) Nonreusable;
- (c) Disposable; and
- (d) Primarily and customarily used to serve a medical purpose.

(15) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(16) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(17) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's assistant who, within the legal scope of clinical practice, orders a medically necessary covered benefit for a recipient.

(18) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(19) "Reasonableness" means:

- (a) Whether or not the expense of the item exceeds the therapeutic benefits which could ordinarily be derived from use of the item;
- (b) Whether or not the item is substantially more costly than a medically-appropriate alternative; and
- (c) Whether or not the item serves the same purpose as an item already available to the recipient.

(20) "Supplier" means a provider of durable medical equipment, medical supplies, prosthetics, or orthotics.

(21) "Supplier manual" means the current Medicare Region C DMERC DMEPOS Supplier Manual.

(22) "Usual and customary charge" means the amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1) Coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

- (a) Be based on medical necessity and reasonableness as determined by the department;
- (b) Require prior authorization in accordance with Section 7 of this administrative regulation; and
- (c) Be provided in compliance with 42 CFR 440.230(c).

(2) The current Medicare Region C DMERC DMEPOS Supplier Manual, accessible at:

[http://www.pgba.com/palmetto/main.nsf/allframesets/pro\\_dmerc.html](http://www.pgba.com/palmetto/main.nsf/allframesets/pro_dmerc.html), shall be used as a basis for the determination of coverage, but shall be subject to medical necessity override by the department to ensure compliance with 42 CFR 440.230(c).

(3) A DME item, medical supply, prosthetic, or orthotic shall require a CMN, unless specifically exempted by the department, that shall be kept on file by the supplier for a period of five (5) years.

(4) If a CMN is not required, a prescriber's order shall be required.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A CMN shall contain:

- (a) The recipient's name and address;

- (b) A complete description of the item or service ordered;
  - (c) The recipient's diagnosis;
  - (d) The expected start date of the order;
  - (e) The length of the recipient's need for the item;
  - (f) The medical necessity for the item;
  - (g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and
  - (h) The prescriber's signature and date of signature.
- (7) Except as specified in subsections (8) and (9) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.
- (8) Except as specified in subsection (10) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.
- (9) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.
- (10) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.
- (11) A CMN shall be updated with each request for prior authorization.
- (12) The department shall only purchase a new DME item.
- (13) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item at the time of purchase.
- (14) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.
- (15) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) The following items shall be covered for purchase only and shall not be rented:

- (a) A cane;
- (b) Crutches;
- (c) A standard walker;
- (d) A prone or supine stander;
- (e) A vest airway clearance system, excluding the generator;
- (f) A noninvasive electric osteogenesis stimulator; and
- (g) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only and shall not be purchased:

- (a) An apnea monitor;
- (b) A respiratory assist device having bivalve pressure capability with backup rate feature;
- (c) A generator for use with a vest airway clearance system;
- (d) A ventilator;
- (e) A negative pressure wound therapy electric pump;
- (f) An electric breast pump;
- (g) The following oxygen systems:
  - 1. Oxygen concentrator;
  - 2. Stationary compressed gas oxygen;
  - 3. Portable gaseous oxygen;
  - 4. Portable liquid oxygen;
  - 5. Stationary liquid oxygen; and
- (h) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) and (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

- (a) Based on an evaluation and recommendation by a speech-language pathologist; and
- (b) Prior authorized.

(2) A customized DME item that is uniquely constructed or custom fabricated to meet the medical needs of an individual recipient shall be

covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical or occupational therapy evaluation shall be required for:

- (a) A power wheelchair; or
- (b) A wheelchair for a recipient who, due to size or medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if they are medically necessary for:

- (a) A congenital defect or deformity;
- (b) A deformity due to injury; or
- (c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

- (a) Prescribed by a licensed prescriber;
- (b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) Prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid outpatient pharmacy program;

- (c) Regardless of whether it is the sole source of nutrition; and
- (d) If prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

- (a) Medical separation of mother and infant;
- (b) Inability of an infant to nurse normally due to a significant feeding problem; or
- (c) An illness or injury that interferes with effective breast feeding.

Section 5. Coverage of Repairs and Replacement of Equipment.

(1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

- (a) During a period of medical need;
- (b) If necessary to make the item serviceable;
- (c) If no warranty is in effect on the requested repair; and
- (d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically-necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

- (a) Loss of the item;
- (b) Irreparable damage or wear; or
- (c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items are excluded from Medicaid coverage through the DME Program:

- (a) An item covered for Medicaid payment through another Medicaid program;
- (b) Equipment that is not primarily and customarily used for a medical purpose;
- (c) Physical fitness equipment;
- (d) Equipment used primarily for the convenience of the recipient

or caregiver;

- (e) A home modification;
- (f) Routine maintenance of DME that includes:
  1. Testing;
  2. Cleaning;
  3. Regulating; and
  4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; and

(h) An item determined not medically necessary by the department.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

- (a) The purchase price of a replacement item; or
- (b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

(4) Prosthetics and orthotics shall be included in the facility reimbursement for a recipient residing in a hospital and shall not be covered through the durable medical equipment program.

(5) Prosthetics and orthotics, if not included in the facility reimbursement for a recipient residing in a nursing facility, intermediate care facility for the mentally retarded, or an institution for individuals with a mental disease, shall be covered through the Durable Medical Equipment Program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

- (a) An item or repair billed to the department at \$300 or more;
- (b) Rental of equipment;
- (c) A therapeutic shoe or boot;
- (d) Orthopedic shoes;
- (e) An adjustment to a prosthetic or orthotic;
- (f) An augmentative communication device;
- (g) A customized DME item;
- (h) A replacement DME item, prosthetic, or orthotic;
- (i) A nutritional supplement;
- (j) An amino acid modified preparation or a low-protein modified food product;
- (k) Rental of a replacement wheelchair or ventilator during a repair to the recipient's primary equipment; or
- (l) An item determined by the department to require prior authorization.

(2) If an item requires prior authorization, a supplier shall obtain written authorization for the item:

- (a) Prior to the date of service; or
- (b) No later than six (6) months after the date of service.

(3) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(4) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(5) A supplier may obtain a faxed CMN from a prescriber to expedite the prior authorization process.

(6) A supplier shall request prior authorization by mailing or faxing the following information to the department:

- (a) A completed prior authorization form MAP-9;
- (b) A completed CMN; and

(c) If requested by the department, additional information required to establish medical necessity.

(7) The following additional information shall be required for prior authorization of a customized item:

- (a) An estimate of the fitting time;
- (b) An estimate of the fabrication time;
- (c) A description of the materials used in customizing the item;

and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(8) The following additional information shall be required for prior authorization of a repair to purchased equipment:

- (a) A description of the nature of the repair;
- (b) An itemization of the parts required for the repair;
- (c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(9) An item shall be prior authorized based on the period of medical necessity but shall not exceed the maximum authorization period specified in the Medicaid DME Program Fee Schedule.

(10) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity.

(11) Prior authorization by the department shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the supplier.

(12) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(13) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate an item of durable medical equipment suitable for use in the home that may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(14) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation. If the invoice price differs from the manufacturer's invoice price quote the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsection (2) of this section, a new item that is purchased shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The purchase price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes K0008, K0009, K0013, and K0014; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS code K0108 or L8499; or

(2) Reimbursement for the purchase of an item that is currently being rented shall be:

(a) For an item that has been rented for less than three (3) months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; or

(b) For an item that has been rented for three (3) months or more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(3) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(4) With the exception of an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) consecutive months, the item shall be



considered to be purchased and shall become the property of the recipient.

(5) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lessor of:

(a) The supplier's usual and customary charge; or  
(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(6) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(7) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;  
(b) Delivery and pickup;  
(c) Setup;  
(d) Routine maintenance; and  
(e) Essential medical supplies required for proper use of the equipment.

(8) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;  
(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number and adhere to all Health Care Financing Administration supplier standards in accordance with 42 CFR 424.57; and

(2) Meet the requirements for provider participation in the Kentucky Medicaid Program in accordance with 907 KAR 1:671 and 907 KAR 1:672.

Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

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

(a) "Form MAP-9, Prior Authorization Form, 12/95 edition", Department for Medicaid Services; and

(b) "Form MAP-1000, Certificate of Medical Necessity, 02/00 edition", Department for Medicaid Services.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: February 7, 2001

FILED WITH LRC: February 15, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not

wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill 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).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics for which payment shall be made by the Medicaid Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for delivery of durable medical equipment, medical supplies, prosthetics and orthotics to eligible Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation will enable the Department for Medicaid Services, as a part of its statutory function and responsibility, to provide medically necessary items to Kentucky's indigent citizenry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific coverage criteria and provider requirements and outlines the authorization process for items the Department for Medicaid Services will reimburse through the Durable Medical Equipment Program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All of Medicaid's 3,500 DME suppliers and all of the Medicaid recipient population that access DME items or equipment will be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact on the Medicaid DME provider community will be immediate. The entire process - prior authorization, delivery of items and equipment and the reimbursement for this equipment should be improved. Providers have been given more time to coordinate efforts with physicians and DMS. The DME providers and DMS will have fewer documents to process since certificates of medical necessity will only be required every 12 months as opposed to every 6 months.

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

(a) Initially: \$367,800

(b) On a continuing basis: \$367,800 annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations and collections. Federal funds of \$258,894 (70.39%) and state matching funds of \$108,906 (29.61%) will be spent.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation will not require an increase in fees or funding.

Authorization for this change is included in KRS 205.560; however, funding for this initiative was not appropriated. The funding for this initiative is derived from a redirection from funds for current services in the enacted budget. In DMS, it is difficult to control costs in any way other than through a reduction in services, the number of Medicaid eligibles, or reimbursement rates, should it become necessary.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HEALTH SERVICES  
Department for Mental Health and Mental Retardation Services  
Division of Substance Abuse  
(New Administrative Regulation)**

**908 KAR 1:315. Zero tolerance program requirements.**

RELATES TO: KRS 189A.010, 189A.040, 908 KAR 1:370, 908 KAR 1:380

STATUTORY AUTHORITY: KRS 189A.040(6)

NECESSITY, FUNCTION, AND CONFORMITY: The 2000 session of the General Assembly enacted amendments to KRS Chapter 189A to specify penalties, and service requirements for persons under the age of twenty-one (21) years who are convicted of being in control of a motor vehicle while having a blood alcohol concentration between .02 and .08 grams of alcohol per 100 milliliters of blood, or per 210 liters of breath. KRS 189A.040(6) requires the cabinet to promulgate administrative regulations for the licensure of facilities providing education or treatment services for offenders receiving education or treatment under KRS 189A.040. This administrative regulation establishes requirements for licensing, and standards for programs, which provide services to persons convicted of violating KRS 189A.010(1)(e).

Section 1. Definitions. (1) "AODE" means a nonmedical and non-hospital-based alcohol and other drug abuse treatment entity licensed in accordance with 908 KAR 1:370.

(2) "Case coordination" means facilitating the provision of court-ordered services to an offender, including communicating with other service providers and the court.

(3) "Prevention assessment" means a process designed to separate a person who requires substance abuse prevention services, from a person who needs a referral to an AODE, by the administration of an assessment tool which has been validated for use with the population being served.

(4) "Preventionist" means an individual or certified prevention professional who receives remuneration for an alcohol or other drug prevention program.

(5) "Prevention program" means a holder of a license issued in accordance with 908 KAR 1:380.

(6) "Qualified early intervention specialist" means a preventionist who:

(a) Specializes in providing services to an individual who is at higher risk for developing a substance abuse disorder, than his age group cohort; and

(b) Meets the requirements of 908 KAR 1:380, Section 4(2)(a).

(7) "Risk-reduction curriculum" means a curriculum that has been demonstrated to promote behavioral change that halts progression toward substance dependency, and reduces risk for other alcohol or drug-related problems, in specified target populations.

(8) "Zero tolerance offender" or "offender" means a person who has been convicted of violating KRS 189A.010(1)(e), and has been sentenced in accordance with KRS 189A.040(1).

(9) "Zero tolerance program" or "program" means a prevention

program which provides court-ordered substance abuse services to a person who is convicted of violating KRS 189A.010(1)(e), in accordance with this administrative regulation.

Section 2. License Requirement. (1) An individual or other entity shall not provide a zero tolerance program, unless the program is operated by a prevention program, which shall be licensed in accordance with 908 KAR 1:380.

(2) An AODE may provide the substance abuse services recommended by a zero tolerance program, based on the assessment required by Section 3 of this administrative regulation, if a zero tolerance program refers an offender to the AODE.

Section 3. Offender Enrollment Process. (1) A program shall perform a prevention assessment on an offender who:

(a) Is ordered by a court to attend a zero tolerance program; or

(b) Requests enrollment in the program.

(2) A zero tolerance program shall notify an offender, in writing, of the rules established in accordance with Section 4 of this administrative regulation prior to enrollment.

(3) A zero tolerance program shall enroll an offender who:

(a) Agrees in writing, to participate in the program;

(b) Authorizes the program, in writing, to disclose information to the sentencing court, including:

1. The results of a prevention assessment;

2. The offender's compliance, or non-compliance with program rules;

3. The date of completion of the program, if applicable; and

4. Other information required by an order of the sentencing court; and

(c) Agrees, in writing, to comply with the program rules established in accordance with Section 4 of this administrative regulation.

Section 4. Program Rules. (1) A zero tolerance program shall establish written rules for participation in the program which specify:

(a) Requirements for attendance, including attendance at services provided by an AODE, if a referral is made in accordance with Section 5(2) of this administrative regulation;

(b) Requirements for payment of fees, in accordance with KRS 189A.040(1)(b);

(c) Standards for enrollment in the program;

(d) Standards for successful completion of the program;

(e) Rules of conduct;

(f) Procedures for sharing information with the sentencing court or its designee;

(g) Procedures for payment of a fee;

(h) A requirement for an offender to authorize an AODE to disclose information needed by the zero tolerance program; and

(i) Other requirements, which are not inconsistent with the requirements of KRS 189A.040, or this administrative regulation, that the program determines to be necessary for the orderly and effective administration of the program.

(2) A zero tolerance program shall establish criteria for involuntary discharge from the program, for violation of program rules.

(3) A program that discharges an offender in accordance with the criteria required by subsection (2) of this section, shall notify the sentencing court, in writing of:

(a) The date the offender is discharged; and

(b) The criteria for involuntary discharge that the offender met.

(4) The notice required by subsection (3) of this section shall be made no later than three (3) days after the decision is made to discharge the offender.

Section 5. Services Required. (1) A zero tolerance program shall provide the following services:

(a) Prevention assessment;

(b) Case coordination;

(c) Preventive education; and

(d) Referral to an AODE, if indicated by the results of a prevention assessment.

(2) If a zero tolerance program makes a referral in accordance with subsection (1)(d) of this section, it shall:

(a) Notify the offender of the results of the prevention assessment;

(b) Provide the offender with a list of AODE programs which are geographically accessible to the offender; and

(c) Provide the offender with a written referral to:

1. The AODE the offender prefers, if an offender states a preference, from the programs identified in paragraph (b) of this subsection; or

2. An AODE on the list specified in paragraph (b) of this subsection, if the offender does not state a preference.

(3) An offender shall:

(a) Enroll in an AODE identified in subsection (2)(b) of this section no later than seven (7) days after the date of the referral; and

(b) Notify the zero tolerance program of the name of the AODE in which the offender enrolls.

(4) The zero tolerance program shall, no later than seven (7) days after the date of the referral made in accordance with subsection (2)(c) of this section, contact the program identified in subsection (3)(b) of this section, to determine if the offender is enrolled in that program.

(5) A zero tolerance program shall assure that offenders under the age of eighteen (18) receive services that are provided separately from those that are provided to individuals who are convicted of violating KRS 189A.010(a), (b), (c), or (d).

Section 6. Standards for Required Services. (1) A prevention assessment shall be performed by a qualified early intervention specialist who shall be:

(a) Employed by the zero tolerance program; or

(b) Under contract to the zero tolerance program.

(2) Preventive education services shall be provided:

(a) In accordance with a risk-reduction curriculum which shall be validated as effective for persons under twenty-one (21) years of age, who are at a higher risk than the general public for developing a substance abuse disorder; and

(b) By an individual who has been authorized, in writing, to use the curriculum, by the author of the curriculum.

(3) A zero tolerance program shall:

(a) Use the written or visual material, included in a curriculum identified in subsection (2)(a) of this section, unless the use of other material has been approved, in writing, by the author of the curriculum, or the Division of Substance Abuse; and

(b) Follow the sequence of presentation specified in the curriculum used, if a sequence is specified in the curriculum, unless the author of the curriculum grants approval, in writing, to deviate from the specified sequence.

(4) A zero tolerance program shall provide case coordination services to a zero tolerance offender who is enrolled, including an offender who is referred to an AODE.

(5) Case coordination shall be performed by a qualified early intervention specialist.

(6) Case coordination shall include:

(a) A review of an offender's progress once every two (2) weeks; and

(b) Provision of the reports required by KRS 189A.040(7).

MARGARET PENNINGTON, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: January 26, 2001

FILED WITH LRC: January 26, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held March 21, 2001 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 work days prior to the March 21, 2001, 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: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the

General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Littlefield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for substance abuse programs which provide services to persons who are convicted of violating KRS 189A.010(1)(e). It specifies offender enrollment procedures, service standards, staff qualifications, and requirements for reporting offender progress in the program to the courts.

(b) The necessity of this administrative regulation: This regulation is needed to implement amendments to KRS Chapter 189A made by the 2000 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 189A has been amended to require offenders under 21 years of age, who have been convicted of being in control of a motor vehicle with a blood alcohol level between .02 and .08 to participate in education or treatment services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 189A.040(6) requires the cabinet to promulgate administrative regulations to establish standards for education and treatment services for offenders. This administrative regulation establishes standards specific to programs which serve minors who have not been convicted of DUI, but have been convicted of being in control of a motor vehicle with a blood alcohol level between .02 and .08.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 15 regional prevention centers which are licensed to provide prevention services. The cabinet estimates that 2,500 individuals will be sentenced to obtain the services specified in this administrative regulation from the prevention programs. Each licensed program, and each offender will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) Initially: Licensed prevention programs will need to integrate offenders into existing programs. In addition, the programs will need to establish procedures for assessment, enrollment, case coordination, and reporting to sentencing courts on the progress of offenders. Offenders will be required to participate in prevention assessments, and preventive education services for up to 90 days.

(b) On a continuing basis: Licensed programs will need to maintain a sufficient capacity to enroll and serve offenders.

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

(a) Initially: There will be no additional cost to implement this administrative regulation. The cabinet currently provides funding for the regional prevention centers to provide the required services.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding zero tolerance services is funding allocated by the cabinet from Title IV of the Safe and Drug Free Schools and Community grant.

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

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: This administrative regulation neither directly nor indirectly establishes fees.

(9) TIERING: Is tiering applied? Tiering is not applied to any of the requirements in this administrative regulation. Tiering is inappropriate because this administrative regulation implements standards related to statutory requirements for all offenders to obtain specified services. Therefore all affected programs need to provide the required services for all offenders.

**CABINET FOR FAMILIES AND CHILDREN  
Department for Community Based Services  
Division of Policy Development  
(New Administrative Regulation)**

**922 KAR 2:190. Civil penalties.**

RELATES TO: KRS Chapter 13B, 199.896, 199.990, EO 2000-1104

STATUTORY AUTHORITY: KRS 194B.050(1), 199.896, 199.990  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) provides that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.990(4), this administrative regulation authorizes the Cabinet for Health Services to impose a civil penalty for a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that pose an immediate threat to the health, safety, or welfare of a child served by a licensed type I or type II child care facility. Additionally, in compliance with KRS 199.896, this administrative regulation permits a licensed child care facility to appeal a civil penalty under KRS Chapter 13B.

Section 1. Assessment of a Civil Penalty. (1) An offense that is subject to a civil penalty shall include a violation of a requirement of 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120 that poses, at the time the violation occurs, an immediate threat to the health, safety, or welfare of a child served by a licensed child care facility.

(2) Notice that a civil penalty has been levied shall:

(a) Be hand delivered by Cabinet for Health Services staff or delivered by certified mail, return receipt requested, to the:

1. Owner;
2. Director; or
3. Person in charge of the licensed child care facility;

(b) Identify a violation for which a civil penalty has been levied;

(c) Identify the amount of a civil penalty upon consideration of the factors specified in KRS 199.896(8). The civil penalty shall:

1. Not exceed \$1,000 for each occurrence;
2. Be made payable to the Kentucky State Treasurer pursuant to KRS 199.990(4); and
3. Be mailed to the Office of Inspector General, Cabinet for Health Services;

(d) Specify that an appeal of a civil penalty shall not act to stay correction of a violation pursuant to KRS 199.896(7);

(e) Specify that payment of a civil penalty shall be stayed if an appeal is requested; and

(f) Specify that the Cabinet for Health Services may deny, suspend or revoke a license for the same offense for which a civil penalty is imposed.

(3) If two (2) or more violations are identified by the Cabinet for Health Services within a one (1) year period, treble penalties shall be levied pursuant to KRS 199.990(4) against a licensed child care facility for the second and subsequent violations that pose an immediate threat, at the time the violation occurs, to the health, safety, or welfare of a child served by the licensee.

Section 2. Appeal Rights. (1) Pursuant to KRS 199.896(7), a licensed child care facility may appeal under KRS Chapter 13B, the assessment of a civil penalty and violation for which a civil penalty was levied.

(2) An appeal shall not limit the authority of the Cabinet for Health Services to:

- (a) Issue an emergency order pursuant to KRS 13B.125(2); or

- (b) Take action pursuant to KRS 199.896(9).

VIOLA P. MILLER, Secretary  
DIETRA PARIS, Commissioner  
HIREN DESAI, Attorney

APPROVED BY AGENCY: February 11, 2001

FILED WITH LRC: February 14, 2001 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2001, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-9126.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes the Cabinet for Health Services to impose a civil penalty for a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that poses an immediate threat, at the time the violation occurs, to the health, safety, or welfare of a child served by a licensed child care facility. Additionally, this administrative regulation permits a licensed child care facility to appeal a civil penalty under KRS Chapter 13B.

(b) The necessity of this administrative regulation: The function of this administrative regulation shall authorize the Cabinet for Health Services to impose a civil penalty for a violation of 922 KAR 2:090, 2:110, or 2:120 that poses an immediate threat, at the time the violation occurs, to the health, safety, or welfare of a child served by a licensed child care facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.990 by permitting the Cabinet for Health Services to impose a civil penalty for a violation of 922 KAR 2:090, 2:110, or 2:120 that poses an immediate threat, at the time the violation occurs, to the health, safety, or welfare of a child served by a licensed child care facility. Additionally, in compliance with KRS 199.896, this administrative regulation permits a licensed child care facility to appeal a civil penalty under KRS Chapter 13B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation complies with the legislative intent of HB 706 of the 2000 Session of the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation required by HB 706 from the 2000 Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: Same as the response for item (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as the response for item (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: Same as the response for item (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include the number of licensed child care facilities. Total: 2,087.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Pursuant to KRS

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199.990, a licensed child care facility may be fined up to \$1000 for each occurrence of a violation of 922 KAR 2:090, 2:110, or 2:120 that poses an immediate threat, at the time the violation occurs, to the health, safety, or welfare of a child served by the licensee. Treble penalties shall be levied if 2 or more violations occur within a 12 month period.

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

(a) Initially:

First Year: The Cabinet for Families and Children budgeted \$2,241,000 in FY '01 and \$2,260,000 in FY '02 for a contract with the Office of Inspector General, Cabinet for Health Services. Any costs associated with implementation of this administrative regulation are within the scope of contracted responsibilities.

(b) On a continuing basis:

Continuing cost or savings: Same as the response for item (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100% federal funds from the Child Care and Development Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Same as the response for item (7).

(9) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering is not required as these policies will become effective statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of February 13, 2001

The February meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, February 13, 2001 at 4:30 p.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 January 9, 2001 meeting were approved.

Present were:

**Members:** Representative John Arnold, Chairman; Senators Joey Pendleton, Richard "Dick" Roeding, and Marshall Long; Representatives Woody Allen, Jimmie Lee and James Bruce.

**LRC Staff:** Dave Nicholas, Donna Little, Edna Lowery, Ellen Benzing, Susan Wunderlich, Donna Valencia, Ellen Steinberg.

**Guests:** Eli Miller, Chris Thompson, University of Kentucky; Veronica Dale, Dennis L. Taulbee, James L. Applegate, Barbara P. Cook, Council on Postsecondary Education; Nick Kearney, Revenue Cabinet; Coleman Shouse, Mark L. Roberts, William P. Hanes, Kentucky Retirement Systems; James Grawe, Larry Disney, Sam Blackburn, Kentucky Real Estate Appraisers Board; Robert Powell, Brenda Priestley, Pamela Biggs, Department of Corrections; Kevin Noland, Karen Waugh, Department for Education; Marilyn Kay Troupe, Mary Ellen Wiederwohl, Education Professional Standards Board; Sherry Deatrick, Roy E. Wilson, Workforce Development Cabinet; Bruce Sparrow, Stephen M. Johnson, Janet Alexander, Sue S. Simon, Department for the Blind; Donna Floyd, Carla H. Montgomery, Department of Workers' Claims; Janie Miller, Carrie Banahan, Char Hummel, Department of Insurance; Colleen Keefe, Ken Pennington, Department of Financial Institutions; Bernard Hettel, Rena Elswick, Marc A. Guilfoil, Kentucky Racing Commission; Trish Howard, Eric Friedlander, Rice Leach, Alex Reese, Steve Davis, W.L. Moore, Dennis Boyd, Betty Barber, Barbara Utter, Bruce W. Scott, Mike Littlefield, Cabinet for Health Services; Karen Doyle, Joyce Metts, Kathy Adams, Shirley Eldridge, Cabinet for Families and Children; Carol L. Grissett; Victoria Graff, parent; Dennis and Karen Arthur; William T. "Bill" Carter, PVA Association; Virgil Monroe; Randy Smith, KRC; Jolene D. Fullerton, Viatical & Life Settlement Association; Marigail Sexton, Kentucky Association of Sexual Assault Programs.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

**Agriculture Experiment Section: University of Kentucky: Division of Regulatory Services: Milk and Cream**

12 KAR 5:010. Licenses. Eli Miller, Director, and Chris Thompson, Milk Coordinator, represented the University.

This administrative regulation was amended as follows: Sections 1(2) and 1(3) were amended to: (1) clarify "nonrenewable temporary license"; and (b) comply with the drafting requirements of KRS Chapter 13A.

12 KAR 5:020. Testing. This administrative regulation was amended as follows: Section 1 was amended to comply with the drafting and format requirements of KRS Chapter 13A.

12 KAR 5:040. Sampling and weighing. This administrative regulation was amended as follows: Section 1 was amended to correct a cross-reference.

12 KAR 5:050. Inspections. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a typographical error.

12 KAR 5:060. Purchases from farm bulk tanks. This administrative regulation was amended as follows: Sections 2 and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

12 KAR 5:070. Uniform standards for payment. This administrative regulation was amended as follows: Section 2(1) was amended to clarify the record-keeping requirements for an agent of the handler.

**Council on Postsecondary Education: Public Educational Institutions**

13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program. Barbara Cook and Dennis Taulbee, General Coun-

sel, represented the Council. Veronica Dale, Kentucky Department for Vocational Rehabilitation, Victoria Graff, parent, and Dennis Arthur, parent, appeared before the Subcommittee in opposition to this administrative regulation. Tony Gates, University of Kentucky, appeared before the Subcommittee in support of this administrative regulation.

Ms. Graff stated that she sent a letter to the Subcommittee members to update them on her meeting with Mr. Taulbee on January 22. Although the Council was sympathetic with her concerns, the Council would not consider changing their position relative to the Academic Common Market for the special needs of students with disabilities. The Council expressed concern about how to identify students with disabilities and the need for more staff to review the programs. The Department for Vocational Rehabilitation had already identified the students. Ms. Dale was her son's counselor from the Department and could answer questions regarding the procedures the Department followed in identifying students with disabilities. Ms. Dale worked with the family and students to help decide which college, in Kentucky or outside Kentucky, the student should attend based on the student's disabilities and the teaching styles and resources used by the program. She received a document from Vanderbilt University which discussed the human organization and development program and explaining its uniqueness and style of learning. Figures supplied to her by the controller for vocational rehabilitation indicated that during the past year, there were 3,649 special needs students that were helped by the Department with financial assistance for tuition or books. Of those students, 9.5 percent, or 346, students attended schools outside of Kentucky. Not all of those students would be eligible for the Kentucky Educational Excellence Scholarship. Assuming there were approximately 300 children that met the KEES scholarship requirements, it would cost the Council \$150,000 to provide the \$500 scholarship for those students to attend out-of-state colleges. The Subcommittee members were sent a letter from Ms. Melissa Bowman of the Protection and Advocacy Commission that explained her concerns for the Academic Common Market and special needs children. Ms. Bowman's letter concluded with the following statements: "CPE should not limit approved schools to those in the Academic Common Market. Decision-making should be made on a non-discriminatory basis. At a minimum, the new regulation should set forth a regulatory process with specific criteria and that accommodates the needs of students with disabilities under applicable federal law and the Kentucky Civil Rights Act." Since the Department had already identified the students, it would not place an undue burden on the Council. This administrative regulation should be amended to allow special needs students who had been identified by the Department for Vocational Rehabilitation and had earned a KEES scholarship, to be permitted to use the KEES scholarship at an out-of-state university that had a teaching style and resources to address the student's disabilities and be successful in college.

Chairman Arnold stated that the statute required that the KEES scholarship be used at a Kentucky institution, unless the out-of-state institution was designated by the Council and offered a degree program in a field of study not offered in Kentucky. Kentucky institutions offered business degrees. Additionally, the KEES program was established to provide a scholarship for undergraduate students.

Mr. Taulbee stated that the statute established a two-part test: first, the Council was required to designate institutions; and second, the student has to pursue a field of study not offered in Kentucky. Ms. Graff relied on the different method of instruction and special strategies at Vanderbilt. However, the Council looked at course content to determine field of study. Because there were over twenty business programs in Kentucky, the program at Vanderbilt was not in a field of study not available in Kentucky. Kentucky institutions were ready and able to accommodate her son.

Mr. Arthur stated that his daughter had been accepted as a freshman at Duquesne University in Pittsburgh for a Doctor of Physical Therapy program, which was not offered in Kentucky. The University of Kentucky offered a masters degree program in physical therapy entered during the third year of study. The Duquesne program offered



a doctorate program, which was similar to a medical degree, while the masters degree program at the University of Kentucky did not lead to a doctorate program and would not permit his daughter to diagnose a patient. There was a reciprocity agreement with the Texas Women's College, which offered a Ph.D. in physical therapy, which allowed graduates to teach and practice as a physical therapist, but not as a medical professional.

Mr. Taulbee stated that the Duquesne program was a doctorate degree program and the KEES program, by statute, provided scholarships for undergraduate Baccalaureate programs.

Ms. Dale stated that Vanderbilt University provided an excellent program which, in her personal opinion, was not available in Kentucky. She had looked at different colleges and Vanderbilt had an excellent program for special needs children, especially with making accommodations for the students. She had not seen a Kentucky institution make accommodations to the extent they were made at Vanderbilt. If Vanderbilt were part of the Academic Common Market or accepted under the KEES program, she would be able to send more students to that institution. Eastern Kentucky University and Murray State University both provided great programs but their programs did not meet Mr. Graff's needs. Vanderbilt provided its services for free.

Mr. Gates stated that the University of Kentucky offered programs for students with disabilities. Several Kentucky universities offered business degrees. The KEES program was established for undergraduate students, to enhance and provide better opportunities for Kentucky high school students to attend Kentucky universities based on their high school grades. The program was not designed to pay for masters or doctorate degrees, but to improve the college-going and retention rates of Kentucky high school graduates. Kentucky universities and colleges were required by law, and have, special programs to meet the needs of students with disabilities. The University made special accommodations for students with disabilities to meet their needs and would welcome any student with disabilities to its classes.

This administrative regulation was amended as follows: Section 9(1) was amended to correct the name of the trust fund, to comply with KRS 164.7877(1).

**Revenue Cabinet: Department of Law: Division of Tax Policy: Ad Valorem Tax: Administration**

103 KAR 5:160. Property valuation administrator office employees: Payment of leave upon separation. Nick Kearney, Tax Consultant, represented the Cabinet. Terry Bennett, Hardin County PVA, and President, Kentucky PVA Association, appeared before the Subcommittee in support of this administrative regulation.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f).

**Kentucky Retirement Systems: General Rules**

105 KAR 1:160. Sick leave plans. Bill Hanes, General Manager, Mark Roberts, Staff, and Coleman Shouse, Staff, represented the Systems.

In response to questions by Senator Roeding, Mr. Hanes stated that this administrative regulation clarified existing law regarding the implementation of alternative and regular sick leave because, within the county system, the agencies were required to select one of the two sick leave programs. This administrative regulation would not cost the system additional money as the agencies were responsible for the costs.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 4, and 6 were amended to comply with the drafting requirements of KRS Chapter 13A.

105 KAR 1:300. Determination of service credit for classified employees. In response to questions by Senator Roeding, Mr. Hanes stated that this administrative regulation implemented legislation from the 2000 Regular Session which gave state employees two additional months of service.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; and (2) Section 2 was amended to make a technical correction.

**Real Estate Appraisers Board**

201 KAR 30:010. Definitions for 201 KAR Chapter 30. Sam Blackburn, Executive Director, Larry Disney, Education Director, and Jim Grawe, Assistant Attorney General, represented the Board.

In response to a question by Senator Roeding, Mr. Blackburn stated that the appraisers were aware of the changes in these administrative regulations.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and Sections 2, 3, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 30:040. Standards of practice. 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 and Sections 2, 3, and 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

201 KAR 30:050. Examination, education, and experience requirement. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 were amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 30:060. Fees administrative regulation. In response to questions by Senator Roeding, Mr. Blackburn stated that an appraiser was charged \$237 for license renewal, with \$25 of that amount going to the Federal Register in Washington, D.C. The statute was amended last year to increase the fee by \$12 to include the standards that appraisers were required to follow. Rather than having the appraisers buy the book from the federal organization for \$25, the Board could buy the books in bulk for \$12 each in order to supply the 1600 Kentucky appraisers with the standards book.

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; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 5 were amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 30:120. Temporary appraisal licenses and certificates. In response to a question by Senator Roeding, Mr. Blackburn stated that this administrative regulation was changed to require appraisers from other states to obtain a temporary permit to operate in Kentucky, which was a similar requirement for Kentucky appraisers practicing in other states. This administrative regulation did not increase the previously-established fee.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 were amended to conform to the drafting and formatting requirements of KRS Chapter 13A.

**Justice Cabinet: Department of Corrections: Division of Local Facilities: Jail Standards for Full-service Facilities**

501 KAR 3:130. Inmate programs; services. Tamela Biggs, Staff Attorney, and Robert Powell, Director of Local Facilities, represented the Department.

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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 5 were amended to comply with the drafting requirements of KRS Chapter 13A.

TION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) the TITLE, NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to change references from "inmates" to "prisoners".

**Office of the Secretary**

501 KAR 6:999. Corrections secured policies and procedures. Pursuant to KRS 61.815(2) and KRS 61.810(1)(i) and (k), and KRS 197.025(6), the Subcommittee went into closed session to review this administrative regulation.

**Restricted Custody Center**

501 KAR 7:130. Inmate programs; services. 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 and Sections 1, 2, 3, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) the TITLE, NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to change references from "residents" and "inmates" to "prisoners".

**Direct Supervision for Full-service Jails**

501 KAR 10:130. Inmate programs; services. 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 and Sections 1 through 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) the TITLE, NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to change references from "inmates" to "prisoners".

**Education, Arts, and Humanities Cabinet: Board of Education: Department of Education: School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Kevin Noland, General Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Noland stated that the bylaws for the Kentucky High School Athletics Association were amended to provide for a uniform start date for the winter sports of basketball, swimming, and wrestling and to clarify the eight semester rule. The eight semester rule meant that once a student started ninth grade, the student was eligible to play sports for eight semesters.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; (2) Section 2(5) was amended to correct punctuation; and (3) Section 5(2) was amended to comply with the format requirements of KRS 13A.2251 for incorporation by reference.

702 KAR 7:125. Pupil attendance. In response to questions by Senator Roeding, Mr. Noland stated that this administrative regulation established reporting codes for pupil attendance to comply with federal reporting codes and to give districts two additional years to update their software. This administrative regulation was promulgated to permit school districts to receive attendance credit for students attending virtual high school.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 7, 22, and 24 were amended to comply with the drafting requirements of KRS Chapter 13A; (2) Section 23 was amended to require the use of the Student Record Release form, or an alternative form, to comply with KRS 159.170; and (3) Section 24 was amended to incorporate by reference the required form, as required by KRS 13A.2251.

**Education Professional Standards Board**

704 KAR 20:670. Kentucky teaching certificates. Mary Ellen Wiederwohl, Staff, and Marilyn Troupe, Staff, represented the Board.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, 5, 7, 8, 9, and 10 were amended to: (1) comply with the drafting and format requirements of KRS Chapter 13A; and (2) correct statutory citations and cross-references to applicable administrative regulations.

**Workforce Development Cabinet: Department for Technical Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:120. Appeals and hearings. Sherry Deatrick, General Counsel, and Roy Wilson, Department for Technical Education, represented the Department.

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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 3 was amended to specify the name of the required Appeal Form; (4) Sections 4, 5, and 8 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (5) Section 7 was amended to delete provisions that repeated, summarized, or modified KRS Chapter 13B, relating to administrative hearings, as required by KRS 13A.120(2)(e), (f), and (i).

780 KAR 3:130. Employee grievances. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Department for the Blind: Business Enterprises Division: Department for the Blind**

782 KAR 1:010. Federal Vocational Rehabilitation Program. Sue Simon, General Counsel, Stephen Johnson, Director of Business Enterprises, and Janet Alexander 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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 11 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) Sections 5 and 9 were amended to specify the names of the required forms; and (5) a new Section 12 was created to incorporate by reference the required forms.

**Public Protection and Regulation Cabinet: Department of Insurance: Health Insurance Contracts**

806 KAR 17:230 & E. Requirements regarding medical director's signature on health care benefit denials. Janie Miller, Commissioner, Carrie Banahan, and Char Hummel represented the Department.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS Chapter 13A; and (2) Section 1 was amended to correct statutory citations.

806 KAR 17:240. Data reporting requirements. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS Chapter 13A; and (2) Section 1 was amended to correct statutory citations.

806 KAR 17:280 & E. Registration, utilization review, and internal appeal. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS Chapter 13A; and (2) Section 1 was amended to correct statutory citations.

806 KAR 17:300 & E. Provider Agreement and Risk Sharing Agreement filing requirements. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS Chapter 13A.

**Department of Financial Institutions: Securities**

808 KAR 10:410. Viatical settlement interests. Ken Pennington, Deputy Commissioner, and Colleen Keefe, General Counsel, represented the Department. Joleen Fullerton, Vice President, Viatical & Life Settlement Association, appeared before the Subcommittee in support of this administrative regulation.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was

amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 2 through 6, 8, and 9 to comply with the formatting and drafting requirements of KRS Chapter 13A; (3) Section 2 was amended to: (a) delete the formula for calculating the required fee referenced in KRS 292.380(5); (b) include a set amount of \$500; and (c) require the issuer to file a sales report indicating the aggregate sales price of securities sold in Kentucky; and (4) Section 9 was amended to correct the edition date of material incorporated by reference.

**Kentucky Racing Commission: Thoroughbred Racing**

810 KAR 1:009 & E. Jockeys and apprentices. Bernie Hettel, Executive Director, Dave Carroll, Assistant Attorney General, and Mark Guilfoyle, Kentucky Racing Commission, represented the Commission.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 3, 4, 5, 7, 8, 13, 14, 15, and 16 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

810 KAR 1:026 & E. Racing associations. This administrative regulation was amended as follows: Sections 11, 29, 34, and 35 were amended to comply with the drafting requirements of KRS Chapter 13A.

810 KAR 1:027 & E. Entries, subscriptions and declarations. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 3 and 6 were amended to comply with the drafting requirements of KRS Chapter 13A.

810 KAR 1:028 & E. Disciplinary measures. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 3 were amended to comply with the drafting requirements of KRS Chapter 13A.

**Harness Racing**

811 KAR 1:075 & E. Racing and track rules. 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 this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1-3, 5-7, 10-16, 20-21, and 23-24 were amended to comply with the formatting and drafting requirements of KRS Chapter 13A.

**Cabinet for Health Services: Department for Public Health: Maternal and Child Health**

902 KAR 4:085 & E. Newborn hearing screening equipment grant award. Eric Friedlander, Director, Commission for Children with Special Health Care Needs, represented the Department.

In response to questions by Senator Roeding, Mr. Friedlander stated that this administrative regulation was promulgated as an emergency one time. The Department had thirty-three hospitals, out of thirty-four eligible hospitals, apply for the grant award. The Department staff visited every hospital to inform the hospitals about this program.

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, 3, 4, 5, 7, 8, and 10 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Sanitation**

902 KAR 10:060 & E. On-site sewage disposal application fee. Dr. Rice Leach, Public Health Commissioner, represented the Department.

In response to questions by Senator Roeding, Dr. Leach stated that this administrative regulation was amended to comply with the 2000 Budget Bill, which generated money for county health departments. The fees were increased from \$660,990 in fiscal year 1999 to a projected \$720,900 in the current year. The increased dollar amounts would be sent directly to local health departments.

In response to a question by Representative Allen, Dr. Leach stated that this administrative regulation and 902 KAR 10:121 increased fees.

Representative Allen stated that government needed to reduce its spending and live within its means, rather than increase fees.

This administrative regulation, as amended, was approved, with Senator Roeding and Representative Allen objecting to its approval.

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; (2) Section 1 was amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 2, relating to future fee calculations, was deleted.

902 KAR 10:121 & E. Inspection fees for public swimming and bathing facilities. In response to questions by Senator Roeding, Dr. Leach stated that the inspection fees for swimming pools was increased by this administrative regulation to meet the increased cost of business in performing the labor-intensive inspections. The fees had not been adjusted for many years. The increased amount was based on a consideration of the consumer price index changes between 1989 and the 2000 Budget Bill.

This administrative regulation, as amended, was approved, with Senator Roeding and Representative Allen objecting to its approval.

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; (2) Sections 1 and 2 were amended to conform to the drafting requirements of KRS 13A.222; and (3) Section 3, relating to future fee calculations, was deleted.

**Health Services and Facilities**

902 KAR 20:180. Psychiatric hospitals; operation and services. Alex Reese, Office of Inspector General, represented the Department.

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; (2) Sections 1 and 3 through 6 were amended to conform to the drafting and formatting requirements of KRS Chapter 13A; (3) Section 4 was amended to require a policy for signing telephone orders for diagnostic testing or treatment; and (4) Sections 5 and 6 were amended to add other ordering professionals.

**Food and Cosmetics**

902 KAR 45:006 & E. Kentucky bed and breakfast. Dr. Rice Leach, Public Health Commissioner, represented the Department.

In response to questions by Senator Roeding, Dr. Leach stated that the Department spent a long time negotiating with the regulated community to establish the fees for bed and breakfasts and other entities. The representatives of the regulated entities had been much involved with the drafting of this administrative regulation. Bed and breakfast establishments had been regulated by the Department since 1991.

Senator Roeding stated that he opposed the increase of fees through the promulgation of emergency administrative regulations. Senate Bill 73 would eliminate that authority and shorten the amount of time for an ordinary administrative regulation to complete the KRS Chapter 13A process.

This administrative regulation, as amended, was approved, with Senator Roeding and Representative Allen objecting to its approval.

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 and Sections 1, 2, 4 to 9, and 11 to 17 were amended to comply with the drafting and format requirements of KRS Chapter 13A; (3) Section 4 was amended to clarify that pets shall not be permitted in the kitchen; and (4) Section 18, relating to future fee calculations, was deleted.

902 KAR 45:110 & E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage

processors and distributors, vending machine companies, and seasonal restricted food concessions. In response to questions by Representative Bruce, Dr. Leach stated that he would re-examine this administrative regulation to base the fees on the volume of the restaurant.

In response to questions by Senator Roeding, Dr. Leach stated that there was concern two years ago regarding the ability of local health departments to generate revenue. There were substantial discussions prior to the 2000 Regular Session. In the budget preparation process, Cabinet representatives worked with the appropriate legislative committees to develop a method to meet the financial problems of local health departments. Money was appropriated from early childhood programs; money was appropriated for training; and it was decided to raise the fees. Some of the counties have raised their local tax contribution for public health. The budget included a requirement for \$300,000 to be raised through patient fee charges paid by patients who could afford to pay for their health care costs.

In response to questions by Representative Allen, Dr. Leach stated that the fees for food establishments had been increased from \$1,800,645 for fiscal year 1999, to \$2,799,032 for fiscal year 2000. The previous fees had been established eight to ten years ago.

Representative Allen stated that the increased fees would be a financial burden on smaller businesses and the fees would be passed on to consumers. Government agencies should not require a seven billion dollar budget.

Representative Lee stated that the executive budget proposed much higher fee increases for these entities than the increases made in these administrative regulations. Dr. Leach and the Department met with members of the budget committees to resolve the fee differences. The committee realized that the fees had not been increased for twelve years. The local health departments depended on local tax money for many services performed at the local level, including statutorily-mandated inspections by the local health departments. The local health departments had been performing those services at a loss and the state made up the difference through increased local taxes. During the 2000 budget process, the committee used the consumer price index for the years between the last increase and 2000 to determine the increase. The increased money went entirely to the local health departments for their services.

This administrative regulation, as amended, was approved, with Senator Roeding and Representative Allen objecting to its approval.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 was amended to comply with the drafting requirements of KRS Chapter 13A; and (3) Section 3, relating to future fee calculations, was deleted.

902 KAR 45:120 & E. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies. This administrative regulation, as amended, was approved, with Senator Roeding and Representative Allen objecting to its approval.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 1, 2 and 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 5, relating to future fee calculations, was deleted.

#### **Department for Medicaid Services Medicaid Services**

907 KAR 1:019 & E. Pharmacy services. Dennis Boyd, Commissioner, Louis Moore, Medical Director, and Betty Barber represented the Department.

In response to questions by Representative Bruce, Commissioner Boyd stated that this administrative regulation was amended to comply with House Bill 608, enacted during the 2000 Regular Session. House Bill 608 required that, for any drugs that had been placed on non-prior authorization as a result of Senate Bill 351, similar drugs of similar costs and efficacy be placed on non-prior authorization. This administrative regulation did not lower the fees for pharmacists.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 2 were amended to correct statutory citations; (2) Sections

1, 2, 6, 7, 10, and 11 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 3 was amended to correct the given Internet website address.

#### **Payment and Services**

907 KAR 3:125 & E. Chiropractic services and reimbursement. Dennis Boyd, Commissioner, and Barbara Utter represented the Department.

In response to questions by Representative Bruce, Commissioner Boyd stated that during the 2000 Regular Session, chiropractic services were added to the list of covered services for Medicaid. This administrative regulation implemented those provisions.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Section 1 were amended to correct statutory citations; (2) Sections 3 and 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 3 was amended to specify the name of the required form.

#### **Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:070. Standards for rape crisis centers. Bruce Scott, Director, Mike Littlefield, Regulations Coordinator, and Randy Oliver, Branch Manager, represented the Department. Marigail Sexton, Executive Director, Kentucky Association of Sexual Assault Programs, appeared before the Subcommittee in support of this administrative regulation.

In response to questions by Senator Roeding, Mr. Scott stated that this administrative regulation would not increase the expenses of individual rape crisis centers.

Ms. Sexton stated that this administrative regulation did not increase expenses; rather, it outlined the provisions of service. The rape crisis centers had been very involved with the Department in writing the provisions of this administrative regulation and believed it would accommodate the many types of centers in Kentucky. An additional amendment was needed to page 24, line 9, to add language agreed to by the centers and the Department, to specify that a victim was not required to participate in an interview.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 1 through 18 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 6(8) was amended to establish a training requirement for supervisors of volunteers.

#### **The Subcommittee determined that the following administrative regulations complied with statutory authority:**

##### **Agriculture Experiment Section: University of Kentucky: Division of Regulatory Services: Milk and Cream**

12 KAR 5:030. Test samples. Eli Miller, Director, and Chris Thompson, Milk Coordinator, represented the University.

##### **Labor Cabinet: Department of Workers' Claims**

803 KAR 25:110 & E. Workers' compensation managed health care plans. Carla Montgomery, Staff Attorney, and Donna Floyd, Staff Attorney, represented the Department.

803 KAR 25:190 & E. Utilization review and medical bill audit.

##### **Department of Insurance: Health Insurance Contracts**

806 KAR 17:290 & E. Independent External Review Program. Janie Miller, Commissioner, Carrie Banahan, and Char Hummel represented the Department.

##### **Cabinet for Health Services: Department for Public Health: Kentucky Board of Family Health Care Providers**

902 KAR 22:040. Charitable health care providers. Steve Davis represented the Department.

##### **Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: Child Support**

921 KAR 1:410. Child support collection and distribution. Karen Doyle, Kathy Adams, and Joyce Metts represented the Department.

In response to questions by Senator Roeding, Ms. Adams stated that the meanings of the terms "tort claims offset", "vehicle booting", and "delinquency listings" were established in Senate Bill 218, enacted

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during the 2000 Regular Session. This administrative regulation was promulgated to comply with Senate Bill 218. The Department received statutory authority during the 1998 Regular Session to revoke or deny a permit to carry a concealed weapon for nonpayment of child support or delinquent payments. Senate Bill 218 established requirements for licensure and permitting and authorized the Department to suspend or revoke a concealed carry permit for six months or one year.

The Subcommittee adjourned at 5:30 p.m. until March 6, 2001, at 10 a.m. in Room 131 of the Capitol Annex.

**At the request of the Subcommittee, the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:**

### **Board of Ophthalmic Dispensers**

- 201 KAR 13:010. Board; powers, duties, meetings.
- 201 KAR 13:012. Repeal of 201 KAR 13:011.
- 201 KAR 13:030. Contact lens fitting.
- 201 KAR 13:050. Apprentices.

### **Board of Certification for Professional Counselors**

- 201 KAR 36:020. Fees - renewal date.
- 201 KAR 36:070. Education requirements.

### **Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

- 301 KAR 2:111E. Deer and turkey hunting on federal areas.
- 301 KAR 2:178E. Deer hunting on wildlife management areas.
- 301 KAR 2:221E. Waterfowl seasons and limits.
- 301 KAR 2:222E. Waterfowl hunting requirements.
- 301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.
- 301 KAR 2:226E. Youth waterfowl hunting season.

### **Hunting and Fishing**

- 301 KAR 3:100E. Special commission permits.

### **Licensing**

- 301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses.

### **Department of Insurance: Health Insurance Contracts**

- 806 KAR 17:180E. Standard health benefit plan and comparison format.

### **Captive Insurers**

- 806 KAR 49:020. Captive insurer application requirements.
- 806 KAR 49:030. Captive insurer reporting requirements.
- 806 KAR 49:040. Captive insurer parents and affiliates.

### **Department of Housing, Buildings and Construction: Plumbing**

- 815 KAR 20:060. Quality and weight of materials.
- 815 KAR 20:090. Soil, waste and vent systems.

### **Cabinet for Health Services: Department for Public Health: Health Services and Facilities**

- 902 KAR 20:066E. Operation and services; adult day health care programs.

### **Department for Medicaid Services: Medicaid Services**

- 907 KAR 1:044E. Mental health center services.
- 907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability.
- 907 KAR 1:479E. Durable medical equipment covered benefits and reimbursement.

### **Payment and Services**

- 907 KAR 3:005E. Physicians' services.
- 907 KAR 3:010E. Reimbursement for physicians' services.

### **Department for Mental Health and Mental Retardation Services: Kentucky Traumatic Brain Injury Trust Fund Board**

- 908 KAR 4:030. Traumatic Brain Injury Trust Fund operations.

### **Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: Child Welfare**

- 922 KAR 1:330. Child protective services.
- 922 KAR 1:420. Child fatality or near fatality investigations.
- 922 KAR 1:430. Child protective services in-home case planning and service delivery.

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**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 HEALTH AND WELFARE**  
**Meeting of February 1, 2001**

committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of February 1, 2001, having been referred to the Committee on January 16, 2001, pursuant to KRS 13A.290(6):

201 KAR 8:440  
201 KAR 9:021 & E  
201 KAR 22:031  
201 KAR 22:106  
901 KAR 5:050 & E  
902 KAR 2:060  
902 KAR 4:120  
902 KAR 100:065  
902 KAR 100:100  
906 KAR 1:110  
907 KAR 1:170 & E  
907 KAR 1:636  
907 KAR 3:130  
922 KAR 2:090  
922 KAR 2:100

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 1, 2001 meeting, which are incorporated by reference.

**INTERIM JOINT COMMITTEE ON EDUCATION**  
**Meeting of February 5, 2001**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of February 5, 2001, having been referred to the Committee on January 16, 2001, pursuant to KRS 13A.290(6):

11 KAR 16:001  
11 KAR 16:010  
11 KAR 16:020  
11 KAR 16:030  
11 KAR 16:040  
11 KAR 16:050  
11 KAR 16:060  
13 KAR 1:030  
13 KAR 2:100

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 5, 2001 meeting, which are hereby incorporated by reference. Additional



## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... I - 2

The Locator Index lists all administrative regulations published in VOLUME 27 of the Administrative Register from July, 2000 through June, 2001. 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 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

### KRS Index ..... I - 16

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 27 of the Administrative Register.

### Subject Index ..... I - 31

The Subject Index is a general index of administrative regulations published in VOLUME 27 of the Administrative Register, and is mainly broken down by agency.



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## VOLUME 26

The administrative regulations listed under VOLUME 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			202 KAR 6:010	2104	12-7-2000
301 KAR 2:221E	1639	2-2-2000	202 KAR 6:020	2105	(See Volume 27)
Expired		8-18-2000	202 KAR 6:030	2108	(See Volume 27)
401 KAR 5:072E	1642	2-14-2000	202 KAR 6:050	2109	(See Volume 27)
Expired		8-18-2000	202 KAR 6:060	2112	(See Volume 27)
501 KAR 6:190E	1919	4-12-2000	301 KAR 1:130		
Replaced		9-11-2000	Amended	2294	(See Volume 27)
501 KAR 6:200E	1922	4-12-2000	301 KAR 1:132		
Replaced		9-11-2000	Amended	2295	(See Volume 27)
811 KAR 1:090E	1793	3-15-2000	301 KAR 1:140		
Expired		9-18-2000	Amended	2296	(See Volume 27)
906 KAR 1:110E	2229	5-10-2000	301 KAR 1:201		
Expired		11-18-2000	Amended	2012	(See Volume 27)
907 KAR 1:012E	1925	3-23-2000	301 KAR 2:144		
Expired		10-18-2000	Amended	2298	(See Volume 27)
907 KAR 1:044E	2231	5-5-2000	301 KAR 2:174		
Expired		11-18-2000	Amended	2299	(See Volume 27)
907 KAR 3:066E	2236	4-17-2000	301 KAR 2:176		
Replaced		10-16-2000	Amended	2300	(See Volume 27)
908 KAR 2:210E	1931	4-14-2000	301 KAR 4:200		
Expired		10-18-2000	Amended	2302	(See Volume 27)
908 KAR 3:050E	1938	3-23-2000	301 KAR 5:030		
Withdrawn		8-9-2000	Amended	2303	(See Volume 27)
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>			401 KAR 5:072	2429	(See Volume 27)
11 KAR 8:030			501 KAR 6:020		
Amended	2281	(See Volume 27)	Amended	2305	8-14-2000
11 KAR 12:040			501 KAR 6:190		
Amended	2286	8-14-2000	Amended	2307	(See Volume 27)
11 KAR 12:050			501 KAR 6:200		
Amended	2287	8-14-2000	Amended	2310	(See Volume 27)
11 KAR 12:070			601 KAR 2:020		
Amended	2288	8-14-2000	Amended	2313	(See Volume 27)
11 KAR 15:060			703 KAR 5:120	2120	8-23-2000
Amended	2290	8-14-2000	703 KAR 5:130	2123	8-23-2000
13 KAR 2:020			704 KAR 20:740	2124	(See Volume 27)
Amended	1987	(See Volume 27)	707 KAR 1:011	2126	9-11-2000
201 KAR 8:390			707 KAR 1:280	2127	(See Volume 27)
Amended	1691		707 KAR 1:290	2131	(See Volume 27)
As Amended	1942		707 KAR 1:300	2132	(See Volume 27)
Withdrawn		9-6-2000	707 KAR 1:310	2134	(See Volume 27)
201 KAR 14:180			707 KAR 1:320	2135	(See Volume 27)
Amended	2292	(See Volume 27)	707 KAR 1:330	2138	(See Volume 27)
201 KAR 27:005			707 KAR 1:340	2139	(See Volume 27)
Amended	2000	(See Volume 27)	707 KAR 1:350	2143	(See Volume 27)
201 KAR 27:010			707 KAR 1:360	2144	(See Volume 27)
Amended	2003	(See Volume 27)	707 KAR 1:370	2146	(See Volume 27)
201 KAR 27:012			707 KAR 1:380	2148	(See Volume 27)
Amended	2004	(See Volume 27)	780 KAR 1:010		
201 KAR 27:013			Amended	2316	(See Volume 27)
Amended	2005	(See Volume 27)	780 KAR 2:010		
201 KAR 27:014	2103	(See Volume 27)	Amended	2317	(See Volume 27)
201 KAR 27:015			780 KAR 2:011	2432	(See Volume 27)
Amended	2007	(See Volume 27)	780 KAR 2:030		
201 KAR 27:035			Amended	2318	(See Volume 27)
Amended	2008	(See Volume 27)	780 KAR 2:040		
201 KAR 32:030			Amended	2319	(See Volume 27)
Amended	2293	(See Volume 27)	780 KAR 2:060		
201 KAR 32:081	2427	(See Volume 27)	Amended	2320	(See Volume 27)
201 KAR 32:101	2427	(See Volume 27)	780 KAR 2:110		
			Amended	2321	(See Volume 27)



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780 KAR 2:140 Amended	2322	(See Volume 27)	902 KAR 13:110 Amended	2349	(See Volume 27)
780 KAR 4:010 Amended	2324	(See Volume 27)	902 KAR 13:130 Repealed	2442	8-14-2000
780 KAR 4:011	2433	(See Volume 27)	902 KAR 13:160	2437	(See Volume 27)
780 KAR 4:050 Amended	2325		902 KAR 13:170	2441	8-14-2000
Withdrawn		9-11-2000	902 KAR 13:171	2442	8-14-2000
780 KAR 5:011	2433	(See Volume 27)	902 KAR 14:070 Amended	2355	(See Volume 27)
780 KAR 7:010 Amended	2326	(See Volume 27)	902 KAR 14:080 Amended	2357	(See Volume 27)
780 KAR 7:011	2434	(See Volume 27)	902 KAR 14:090 Amended	2366	(See Volume 27)
780 KAR 7:020 Amended	2327	(See Volume 27)	902 KAR 100:010 Amended	2371	(See Volume 27)
780 KAR 7:040 Amended	2328	(See Volume 27)	902 KAR 100:036	2443	9-11-2000
780 KAR 7:060 Amended	2329	(See Volume 27)	902 KAR 100:040 Amended	2382	(See Volume 27)
780 KAR 9:011	2435	(See Volume 27)	902 KAR 100:041 Amended	2389	(See Volume 27)
781 KAR 1:010 Amended	2030	(See Volume 27)	902 KAR 100:042	2444	(See Volume 27)
781 KAR 1:050 Amended	2032	(See Volume 27)	902 KAR 100:045 Amended	2392	(See Volume 27)
803 KAR 2:180 Amended	2038	(See Volume 27)	902 KAR 100:058 Amended	2395	(See Volume 27)
806 KAR 6:075	2168	(See Volume 27)	902 KAR 100:070 Amended	2402	(See Volume 27)
806 KAR 38:090 Repealed	2436	8-14-2000	902 KAR 100:085 Amended	2416	(See Volume 27)
806 KAR 38:091	2436	8-14-2000	902 KAR 100:165 Amended	2418	(See Volume 27)
808 KAR 10:030 Amended	2042	(See Volume 27)	907 KAR 1:002 Repealed	1878	6-12-2000
808 KAR 10:040 Amended	2043	(See Volume 27)	921 KAR 2:050 Amended	2421	8-14-2000
902 KAR 13:010 Amended	2330	(See Volume 27)	922 KAR 1:140 Amended	2423	(See Volume 27)
902 KAR 13:020 Repealed	2442	8-14-2000	922 KAR 1:300 Amended	2068	(See Volume 27)
902 KAR 13:050 Amended	2332	8-14-2000	922 KAR 1:305	2181	(See Volume 27)
902 KAR 13:070 Amended	2339	(See Volume 27)	922 KAR 1:310 Amended	2080	(See Volume 27)
902 KAR 13:080 Amended	2343	8-14-2000	922 KAR 1:380	2183	(See Volume 27)
902 KAR 13:090 Amended	2346	(See Volume 27)	922 KAR 1:390	2184	(See Volume 27)

\*Statement of Consideration Not Filed by Deadline

\*\*Found deficient by legislative committee

## VOLUME 27

Regulation Number	27 Ky.R. Page No.	Effective Date	Regulation Number	27 Ky.R. Page No.	Effective Date
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b> (Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)			13 KAR 2:100E	703	8-15-2000
			Replaced	2117	2-5-2001
			40 KAR 3:010E	345	6-16-2000
			Replaced	1766	1-15-2001
			103 KAR 28:140E	54	6-1-2000
			Expired		12-18-2000
10 KAR 2:020E	2065	12-29-2000	105 KAR 1:290E	345	7-14-2000
10 KAR 3:020E	2321	2-15-2001	Replaced	1447	12-21-2000
10 KAR 3:030E	2322	2-15-2001	200 KAR 24:020E	2066	1-5-2001
13 KAR 1:030E	700	8-15-2000	201 KAR 9:021E	347	7-13-2000
Replaced	2112	2-5-2001	Expired		1-19-2001
			201 KAR 18:102E	2068	1-11-2001



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202 KAR 7:030E	2323	2-15-2001	704 KAR 20:500E	357	7-14-2000
202 KAR 7:050E	2324	2-15-2001	Replaced	1473	12-21-2000
202 KAR 7:060E	2326	2-15-2001	704 KAR 20:706E	359	7-14-2000
202 KAR 7:070E	2328	2-15-2001	Replaced	1475	12-21-2000
202 KAR 7:080E	2332	2-15-2001	704 KAR 20:750E	361	7-14-2000
202 KAR 7:090E	2334	2-15-2001	Replaced	1478	12-21-2000
202 KAR 7:092E	2336	2-15-2001	705 KAR 2:140E	59	6-12-2000
202 KAR 7:094E	2340	2-15-2001	Replaced	1260	11-17-2000
202 KAR 7:100E	2344	2-15-2001	787 KAR 1:230E	2402	1-30-2001
202 KAR 7:102E	2347	2-15-2001	803 KAR 2:500E	2072	12-28-2000
202 KAR 7:110E	2349	2-15-2001	803 KAR 25:010E	363	6-27-2000
202 KAR 7:120E	2349	2-15-2001	Replaced	1478	12-21-2000
202 KAR 7:130E	2350	2-15-2001	803 KAR 25:012E	371	6-27-2000
202 KAR 7:140E	2351	2-15-2001	Replaced	1486	12-21-2000
202 KAR 7:150E	2353	2-15-2001	803 KAR 25:070E	373	6-27-2000
202 KAR 7:160E	2354	2-15-2001	Withdrawn		9-12-2000
202 KAR 7:405E	2355	2-15-2001	803 KAR 25:101E	375	6-27-2000
202 KAR 7:407E	2356	2-15-2001	Replaced	1488	12-21-2000
202 KAR 7:409E	2357	2-15-2001	803 KAR 25:110E	1185	9-27-2000
202 KAR 7:431E	2359	2-15-2001	803 KAR 25:190E	1188	9-27-2000
202 KAR 7:426E	2360	2-15-2001	804 KAR 4:360E	2403	2-13-2001
202 KAR 7:433E	2361	2-15-2001	806 KAR 4:010E	376	7-12-2000
202 KAR 7:435E	2362	2-15-2001	Withdrawn		9-11-2000
202 KAR 7:436E	2363	2-15-2001	Resubmitted	943	9-11-2000
202 KAR 7:461E	2364	2-15-2001	Replaced	2151	2-15-2001
202 KAR 7:465E	2365	2-15-2001	806 KAR 9:001E	378	7-12-2000
202 KAR 7:491E	2367	2-15-2001	Withdrawn		9-8-2000
202 KAR 7:493E	2367	2-15-2001	Resubmitted	946	9-8-2000
202 KAR 7:495E	2369	2-15-2001	Replaced	2153	2-15-2001
202 KAR 7:497E	2370	2-15-2001	806 KAR 9:006E	379	7-12-2000
202 KAR 7:520E	2371	2-15-2001	Replaced	1399	1-15-2001
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202 KAR 7:580E	2375	2-15-2001	Replaced	1804	1-15-2001
202 KAR 7:582E	2382	2-15-2001	806 KAR 9:070E	381	7-12-2000
202 KAR 7:584E	2386	2-15-2001	Withdrawn		9-8-2000
202 KAR 7:590E	2391	2-15-2001	Resubmitted	947	9-8-2000
202 KAR 7:595E	2395	2-15-2001	Replaced	2153	2-15-2001
301 KAR 2:111E	1178	9-19-2000	806 KAR 9:120E	382	7-12-2000
301 KAR 2:132E	2400	1-12-2001	Replaced	1804	1-15-2001
301 KAR 2:178E	1179	9-19-2000	806 KAR 9:200E	383	7-12-2000
301 KAR 2:221E	1749	11-22-2000	Replaced	1804	1-15-2001
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780 KAR 4:060			Amended	1335	
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