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This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

Persons having an interest in the subject matter of a proposed regulation published herein may request a public hearing or submit comments within 30 days of the date of this issue to the official designated at the end of each proposed regulation.

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# Emergency Regulations Now In Effect

**JULIAN M. CARROLL, GOVERNOR**  
Executive Order 79-1181  
December 7, 1979

**EMERGENCY REGULATION**  
Department for Natural Resources  
and Environmental Protection

WHEREAS, the Governor has concluded that there is a significant financial burden caused the coal industry by the current bonding requirements in the various federal and state surface mining statutes; and

WHEREAS, the difficulty in obtaining bonds for surface mining operations, as well as underground mining operations, has increased; and

WHEREAS, the cost of the bonds themselves and the rapidly increasing total costs of mining have escalated ahead of even the normal rates of inflation; and

WHEREAS, the demand for coal and the price currently being offered in the market remain repressed; and

WHEREAS, the Secretary of the Department for Natural Resources and Environmental Protection has recommended that the attached Regulation become effective to ease the difficulty in bonding for surface mining:

NOW, THEREFORE, I, JULIAN M. CARROLL, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.085(2) of the Kentucky Revised Statutes, do hereby acknowledge the finding of the Secretary of the Department for Natural Resources and Environmental Protection that an emergency exists and direct that the attached Regulation become effective immediately upon being filed in the Office of the Legislative Research Commission.

JULIAN M. CARROLL, Governor  
DREXELL L. DAVIS, Secretary of State

**DEPARTMENT FOR NATURAL RESOURCES  
AND ENVIRONMENTAL PROTECTION**  
Bureau of Surface Mining  
Reclamation and Enforcement

405 KAR 1:051E. Incremental bonding.

RELATES TO: KRS 350.060

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: December 7, 1979

EXPIRES: April 5, 1980

NECESSITY AND FUNCTION: KRS 350.060 requires the Department for Natural Resources and Environmental Protection to adopt reasonable bonding regulations to cover the cost of reclamation instant to the strip mining of coal. This regulation sets forth procedures and requirements related to the incremental bonding of such permits for surface mining permits.

Section 1. Incremental bonding. (1) A surety satisfactory to the department may be considered, in the discretion of the department, a bond payable in a penal sum to the department to be determined by the department incrementally; provided that any applicant shall, as a permit condition, file with the department pursuant to 405 KAR 1:050 a backfilling and grading plan, a plan for handling waste materials and a revegetation plan sufficient to indicate to the department that the applicant will follow the proposed method of operation and other requirements as set forth by the department.

(2) Bonds issued pursuant to subsection (1) shall be determined by taking into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, and reclamation to be required; provided that the applicant shall identify as part of his plan of operation increments of area of land affected on which he will conduct his operation; and provided further that the applicant shall confine his operations to the identified and bonded increments at all times while operations are conducted on the site.

(3) For purposes of posting the incremental bonds pursuant to subsections (1) and (2), the department shall propose, and the applicant shall agree to, the posting of each additional incremental bond as operations are conducted on each subsequent increment on the site. The department shall publish from time to time procedures and documents to implement this regulation.

(4) The total amount of bond in effect during an operation as set pursuant to this regulation shall at all times be sufficient to reclaim the total disturbed area; provided that the total bond in effect shall be applicable to the total disturbed area and adequate to cover the cost of reclamation of the total disturbed area.

C. FRANK HARSCHER, Secretary  
ADOPTED: December 7, 1979  
RECEIVED BY LRC: December 7, 1979 at 3:30 p.m.

**JULIAN M. CARROLL, GOVERNOR**  
Executive Order 79-1154  
December 3, 1979

**EMERGENCY REGULATION**  
Department for Human Resources

WHEREAS, the 1979 Congress has enacted legislation establishing a Federal Energy Crisis Assistance Program, and providing funding for eligible recipients to be administered by state governments; and

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating, by regulation, the policies of the Department with respect to the provision of Federal Energy Crisis Assistance; and

WHEREAS, the Secretary has promulgated a regulation providing for implementation of the Federal Energy Crisis Assistance Program which should be effective for the coming winter; and

WHEREAS, the time delays inherent in complying with the procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation during the Winter of 1979-1980; and

WHEREAS, the Secretary has, therefore, found that an emergency exists with respect to the said proposed regulation, and that, therefore, such proposed regulation should, pursuant to the provision of law, be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, JULIAN M. CARROLL, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for the Federal Energy Crisis Assistance Program, and direct that said regulation shall be effective upon filing with the Legislative Research Commission as provided in Chapter 13 of Kentucky Revised Statutes.

JULIAN M. CARROLL, Governor  
DREXELL R. DAVIS, Secretary of State

#### DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

904 KAR 2:086E. Federal energy cost assistance program.

RELATES TO: KRS 194.050  
PURSUANT TO: KRS 13.082, 194.050  
EFFECTIVE: December 3, 1979  
EXPIRES: April 1, 1980

NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to administer a program to provide payments to supply energy for heating or heating related purposes to needy families within the Commonwealth of Kentucky. This regulation sets forth the eligibility and payments criteria for assistance under the Federal Energy Crisis Assistance Program (FECAP).

Section 1. Application. Each household requesting assistance will be required to complete an application and provide such information as may be deemed necessary to determine eligibility, in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions. Terms used in FECAP are defined as follows: (1) Principal residence is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences or commercial establishments.

(2) Energy for heating is defined to include electricity, gas, and any other heating fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) Household is defined as one or more persons who share common living arrangements in a principal residence.

(4) A farm household is one in which the household is actually residing on a place of ten (10) or more acres from which annual sales of farm products amount to fifty dollars (\$50) or more annually, or on a place of less than ten (10) acres from which sales of farm products amount to \$250 or more annually.

(5) A non-farm household is one not meeting the definition of a farm household.

Section 3. Eligibility Criteria. A household must meet the following conditions of eligibility for receipt of FECAP payments:

(1) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income received by the household during the three (3) calendar months preceding the month of application will be considered, except that for farm households and the self-employed, the payments shall be annualized and/or prorated as shown in subsection (2) of this section.

(2) Gross income for the three (3) calendar months preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are the supplementary medical insurance premium and any federal, state or local special purpose assistance payments (such as, the aid to families with dependent children child care special allowance, housing and urban development "Section 8" payments, emergency assistance program payments, etc.). Gross farm and self-employment income is the net gross (total income minus costs of production). The self-employment gross (of other than farm households) is determined for the twelve (12) months preceding the month of application and prorated over the twelve (12) month period; the monthly amount is then multiplied by three (3).

Income Scale		
Family Size	Non-Farm Three Months	Farm Annual
1	\$1063	\$3638
2	1406	4800
3	1750	5963
4	2094	7125
5	2438	8288
6	2781	9450
each additional add	344	1163

(3) The household must have total liquid resources at the time of application of not more than \$1,500 for one (1) or \$2,250 for two (2) or more household members. Liquid resources include savings accounts, checking accounts, stocks, bonds, certificates of deposit and cash on hand.

(4) The household must attest that it is financially unable to obtain or retain energy for heating necessary to prevent or alleviate a life or health threatening situation; and that it is currently, or will be within fifteen (15) days, without energy.

Section 4. Payment Levels. The total payment for a household may not exceed \$400. Payments shall be in accordance with the following criteria:

(1) If the vendor (provider of fuel or energy) uses a continuous billing cycle (e.g., monthly, bi-monthly), arrearage



and current month charges may be paid up to \$400 per household.

(2) If the vendor (provider of fuel or energy) uses a non-continuous billing cycle (e.g., is paid at time of delivery), current delivery of fuel charges may be paid up to \$200 per household, except as specified below. It is the intent of the program that each such household shall obtain \$200 worth of fuel at time of delivery, if possible. If the provider is unable to deliver \$200 worth of fuel (due to inadequate storage facilities of the household, or because the provider will not deliver less than a minimum load which costs more than \$200) the actual amount closest to the maximum of \$200 will be authorized. In such instances, the cost of the minimum delivery or the household maximum of \$400 (whichever is less) shall be the maximum allowable payment. Arrearages will not be paid for non-continuous billing vendors unless there is no other available vendor, and the available vendor will deliver fuel only on receipt of payment for arrearages. In such instances payment for arrearages plus current delivery may not exceed the total of \$400 per household.

(3) Households previously approved may re-apply and if still eligible, be approved for payment of such remaining amounts as will cause the total payment to the household to equal the household maximum of \$400.

**Section 5. Payment Methods.** Payment may be authorized to one or more providers, at the discretion of the recipient, in accordance with the following:

(1) If the recipient utilizes a vendor who has a continuous billing cycle, payment is authorized by a two (2) party check made payable to the provider and recipient, except that a direct vendor payment may be authorized if necessary to obtain energy/fuel.

(2) If the recipient utilizes energy from suppliers on an irregular or one (1) time basis, payment may be authorized utilizing a two (2) party check or a check made payable to the vendor only, as appropriate to secure needed fuel.

(3) If no available vendor will accept payment in accordance with subsections (1) or (2) of this section, a direct payment to the recipient may be authorized.

**Section 6. Time Standards.** The department shall make an eligibility determination promptly, but not to exceed seven (7) days from receipt of a completed and signed application.

**Section 7. Right to a Fair Hearing.** Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

**Section 8. Effective Dates.** The following shall be the implementation and termination dates for FECAP:

(1) The department shall fully implement FECAP as soon after approval of the state plan (and accessibility of federal funds) as is administratively possible. This shall be within ten (10) days of approval of the state plan, or on December 1, 1979, whichever is later. Partial implementation will occur prior to December 1, 1979, for selected emergency services.

(2) FECAP shall be terminated by the secretary when actual and projected program expenditures have resulted in utilization of available funds.

(3) FECAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose in either federal fiscal year 1980 or succeeding fiscal years.

**Section 9. Vendor Responsibilities.** Any vendor accepting payment from FECAP for fuel provided eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment.

(2) For balances remaining after acceptance of the FECAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan.

(3) A reconnection charge may be imposed only where such a charge was company practice prior to September 1, 1979.

(4) No security deposit may be required to be paid except where such a deposit was required by state law or explicit state regulations in effect prior to September 1, 1979, and where required by law or regulation, to the extent such security deposit is included in a deferred payment arrangement.

JACK F. WADDELL, Commissioner

ADOPTED: November 28, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 3, 1979 at 4 p.m.

## Amended Regulations Now In Effect

DEPARTMENT FOR NATURAL RESOURCES  
AND ENVIRONMENTAL PROTECTION  
Bureau of Environmental Protection  
Division of Water Quality  
As Amended

401 KAR 5:026. Classification of waters.

RELATES TO: KRS 224.020, 224.060

PURSUANT TO: KRS 13.082, 224.033(17)

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: This regulation applies the use classifications found in Section 4 of 401 KAR

5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria *specified* [delineated] in Section 3 of 401 KAR 5:031.

**Section 1. Classification to Designated Uses.** Waters classified under this regulation shall be designated for *all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 6* [one or more of the beneficial uses recognized in 401 KAR 5:031]. Until reclassified in accordance with the procedures of this regulation [all waters of the Commonwealth are classified for aquatic life and secondary contact recreation waters as specified in 401

KAR 5:031, Sections 6 and 8(3). Where currently serving as domestic raw water supplies, waters shall be classified as suitable for domestic raw water supply sources as specified in 401 KAR 5:031, Section 7. These shall be the lowest classifications that can be applied to waters of the Commonwealth]. The criteria which are indicated for these classifications *shall be* [are] applicable in all cases unless otherwise ordered by the department pursuant to 401 KAR 5:031, Section 9. Outstanding resource waters may have *unique* [definitive] water quality characteristics which shall be maintained even beyond the water's designated classification. [The department shall, subject to the concurrence of the classification task force and after consulting with the appropriate 208 management agencies, formally designate the beneficial uses of all waters according to the procedures of this regulation.]

Section 2. *Reclassification.* [Upgrading of Classification.] The reclassification of waters of the Commonwealth which establishes a *different* [more stringent] classification than is [presently] established under [by] this regulation shall be adopted only upon affirmative findings by the department pursuant to Sections 5 and 6 [that the proposed designated use is attainable after considering environmental, technological, social, economic, and institutional factors]. *If a water body is designated for a more stringent use than is currently being attained, the department may reclassify the water body (segment) upon demonstration that the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing "point" sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035 and imposition of such extra controls would result in "substantial" adverse economic and social impact. Implementation of this section will be consistent with 401 KAR 5:029, Section 2.*

Section 3. *Priority for Implementation.* Except as provided in subsection (4) of this section, the priorities for reclassification of the waters of the Commonwealth are:

(1) Waters receiving (or proposed to receive) discharges from publicly-owned treatment works and/or serving as public water supply sources in the following order of priority:

(a) Any local units of government with a pending public construction permit application for installation or upgrading of a sewage treatment plant and/or public water treatment plant.

(b) Any local units of government in the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant, in an order of priority consistent with their priority project list rank.

(c) Any local units of government which request consideration prior to their entering into either their own construction project, a [the] NPDES permit action [program], or the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant.

(d) Other local units of government.

(2) Waters receiving (or proposed to receive) discharges from any other (private or semi-public) treatment works, in the following order of priority:

(a) New NPDES permit applicants or proposed NPDES permit modifications to waterways which may potentially be classified for a beneficial use of cold-water aquatic habitat.

(b) All other segments with private or semi-public facilities, on a first-come, first-serve basis.

(3) All other surface waters which do not have any existing or proposed point source dischargers.

(4) These priorities may be varied in a particular case pursuant to an administrative hearing.

Section 4. *Responsibility for Providing Documentation.* The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is outlined in Section 5.

(1) The department shall provide supporting documentation for the reclassification of waters on which are located (or proposed to be located) facilities which are either:

(a) Publicly-owned treatment works;

(b) Outstanding resource waters on publicly owned land; or

(c) New NPDES permit applicants or proposed NPDES permit modifications for [to] waters which may potentially be classified for a beneficial use of outstanding resource waters.

(2) Any [The] applicant filing for reclassification in circumvention of the priority system contained in Section 3 shall provide classification documentation for waters on which discharges from private or semi-public treatment works are located (or proposed to be located). In these cases the applicant sustains the burden of proof that the reclassification is appropriate and necessary.

(3) The department shall provide documentation for all other waters which do not have any existing or proposed point source dischargers.

Section 5. *Required Documentation.* This section outlines the documentation required to support the reclassifications of surface waters of the Commonwealth as follows:

(1) A USGS 7.5 minute map will be prepared showing those waters or stream segments to be classified. *A description consisting of a river mile index with existing and proposed discharge points. [, and use designations proposed for each segment will also be prepared].*

(2) Existing uses and water quality data for the proposed waters or stream segments for which the reclassification is proposed. Where adequate data are [is] unavailable, additional studies may be required by the department.

(3) General land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment for which the reclassification is proposed.

(4) The existing and designated uses of the receiving waters into which the segment under consideration discharges and [or] the downstream uses of those receiving waters.

(5) General physical characteristics of the stream segment including, but not limited to width, depth, bottom composition, and slope.

(6) The frequency of occasions when there is no natural flow in the segment, the low flow in the segment and low flow in adjacent segments.

(7) The [expected low flow at the] first milepoint at which the low flow exceeds one (1) cfs. [in which the aquatic life use is applicable.]

(8) An assessment of the existing and potential aquatic life habitat in the stream segment under consideration and the adjacent upstream segment. The existing aquatic life in the area must be documented as well as an assessment of

livestock and natural wildlife dependence upon the stream segment.

(9) The existing and proposed designated uses for the stream segment(s) [segments] in question.

(10) In addition, for downgrading, information must be supplied pursuant to Section 2, specifically:

(a) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation; or

(b) An assessment of the adverse social and economic impacts of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures by which use classifications will be assigned. Procedures for designating the use classification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3. [Dischargers described in Section 4(1)(a) and (b) are considered automatically to have applied for designation under this regulation.]

[(1) Each application with the accompanying information specified in Section 5 shall be reviewed by a staff review panel designated by the secretary. Preliminary review shall ascertain whether the stream segments conform with the conditions specified in Section 1 and shall evaluate the adequacy of the supporting documentation as required by Section 5. The review panel may also refer to other information such as prior stream surveys done by the department and may request or conduct independent biological assessments of the waters in question. Such additional information will be added to the application file. The review panel may specify deficiencies in the documentation and may request the applicant to remedy the deficiencies. Based on available information, a preliminary use classification will be proposed by the staff review panel and forwarded along with copies of the complete application file to the classification task force and any affected 208 agency.]

[(2) Upon completion of the preliminary review, a public meeting or meetings shall be scheduled by the staff review panel at a location within the drainage basin or within ten (10) miles thereof. This meeting or meetings shall be planned and held in consultation with the affected 208 agency or agencies, or, in non-designated areas, with the affected area development districts (ADD) agency or agencies. The staff review panel shall cause notice of said public meetings, specifying date, time, location, and subject matter thereof, including a description of the proposed action and a brief statement of the implications of such action, to be published in a newspaper of general circulation in the area affected by the proposed beneficial use classification of the waters in question at least thirty (30) days prior to said meeting.]

[(1) [(3)] For each of the waters for which a reclassification [beneficial use classification] is proposed, the department [staff] or applicant as defined in Section 4(2), [review panel] shall prepare a fact sheet containing, but not [to be] limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the waters proposed for specified use classifications, including the location of existing and/or proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which [purports to] demonstrates that said classification is appropriate;

(e) The appropriate water quality criteria for the segment(s) based on the proposed designated use(s); [Water quality standards proposed for the waters in question if designated for the beneficial use(s);]

(f) The treatment requirements proposed for discharges [dischargers] to the waters in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the waters in question;

(h) The procedure by which the designation will be made.

(2) [(4)] Based upon all available information, [including statements received at the public meetings,] the staff [review panel] shall make its recommendation of use classifications of the waters in question to the secretary [classification task force].

[(5) The classification task force will review all available information and documentation and recommend use classifications of the segments in question to the secretary.]

(3) [(6)] The secretary shall cause to be prepared a list of segments and their classification to be published as an administrative regulation [after considering the recommendations of the staff review panel, classification task force and public hearing records].

(4) [(7)] Upon completing the review period and the procedures for promulgation under administrative rule making, all designated waters and their use classifications shall be attached as an ["addendum"] to this regulation.

Section 7. The provisions of this regulation shall not be severable with 401 KAR 5:029, 401 KAR 5:031, and 401 KAR 5:035.

C. FRANK HARSCHER III, Secretary

ADOPTED: November 14, 1979

RECEIVED BY LRC: November 15, 1979 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES  
AND ENVIRONMENTAL PROTECTION  
Bureau of Environmental Protection  
Division of Water Quality  
As Amended

401 KAR 5:029. General provisions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.020, 224.033, 224.060

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: This regulation contains a definition and abbreviation section applicable to all water quality regulations. A non-degradation section is included pursuant to KRS Chapter 224. A section pertaining to withdrawal of waters not meeting water quality standards and criteria is included to address withdrawal of contaminated waters. A sample collection and analytical methodology section is included to insure reproducible analytical results.

Section 1. Definitions and Abbreviations. (1) General function of definitions. The following definitions describe

terms used in this chapter. Terms not defined below shall have the meaning given to them in relevant statutes or, if not defined in statutes, the meaning attributed by common use.

[(a) "Agricultural use" means those waters which are designated for irrigation, livestock watering, and other related agricultural practices.]

(a) [(b)] "Aquifer" means any formation of soil, sand, rock, gravel, limestone, sandstone, or other material or any fracture, crevice, or void in any space formation from which underground water is or may be available [produced].

(b) [(c)] "Coldwater aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life as well as stocked trout.

(c) [(d)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(d) [(e)] "Criteria" means specific concentrations of water constituents which, if not exceeded, are expected to result in an aquatic ecosystem suitable for *designated* [higher] uses of waters. Such criteria are derived to protect legitimate uses such as [agriculture use,] aquatic life, domestic water supply, and recreational use.

(e) [(f)] "Division" means the Division of Water Quality.

(f) "Effluent ditch" means that portion of a treatment system which is a discreet, person-made conveyance, either totally owned, leased or under proper easement by the discharger, which transports a discharge to waters of the Commonwealth.

(g) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (thermocline) of a lake.

(h) "Eutrophication" ["Euthrophication"] means the enrichment of waters of the state by the discharge or addition of nutrients.

[(i) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed.]

(i) [(j)] "Fecal coliform" means the portion of the coliform group which is present in the gut or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at 44.5 degrees plus or minus 0.2 [0.5] degrees C.

(j) [(k)] "Hypolimnion" means the lower cold region of a stratified body of water that extends from the metalimnion to the bottom of the lake and circulation is restricted while stratified with the upper waters thereby receiving no oxygen from the atmosphere.

(k) [(l)] "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria [b babacteriaia], fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, [herpets,] and fishes. Under some natural conditions one (1) or more of the above groups [Phyla] may be absent from any given surface water.

(l) "Intermittent stream" means a stream that flows at certain times of the year as when it receives water from springs or precipitation in the immediate watershed.

(m) "LC<sub>50</sub>" is used to express the results of bioassays having lethality as the criterion of toxicity. A numerical percentage is used to indicate the percentage of the test animals killed at a given concentration.

(n) "Low flow (seven (7) day, once-in-ten (10) year low flow)" means that minimum average flow which occurs for

seven (7) consecutive days with a recurrence interval of ten (10) years.

(o) "Low-flow stream" means that portion of a water-course where[.]

[1.] The low flow (not attributable to discharges and other hydraulic alterations) is one (1) cubic foot per second or less. [; and]

[2. During low flow conditions described in paragraph (o) of this subsection a significant amount, as determined by the departments of the total flow of the stream is composed of discharges.]

(p) "Median tolerance limit (TLM)" is a measure of the concentration at which fifty (50) percent of the organisms survive.

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

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

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

(s) [(t)] "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin as opposed to climatic change or naturally occurring seasonally variable temperature associated with riparian vegetation and seasonal changes.

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

(u) "Non point" means any source of pollutants not defined by point source as used in this regulation.

(v) "Outstanding resource waters" means [high quality] waters designated by the department pursuant to 401 KAR 5:031, Section 8 [as having state and national significance; they may include waters in state parks, wildlife refuges and waters of exceptional recreational or ecological significance, and river segments in the Kentucky Wild Rivers system].

(w) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

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

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

(z) "Public water supply" means only surface water that with conventional treatment will be suitable for human consumption, culinary purposes, or in any food or beverage processing industry and meet state and/or federal regulations for drinking water. *This term is synonymous with "domestic water supply."*

(aa) "Standard" is a numerical value, range of values, or narrative statement promulgated by the department to

maintain and protect the waters of the Commonwealth for designated uses.

(bb) "Surface waters" means those waters having well defined banks and beds, either constantly [flowing] or intermittently flowing, except effluent ditches; impounded waters; and any subterranean waters flowing in well defined channels and having a clear hydrologic connection with the surface.

(cc) "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs.

(dd) "Toxic substances[:]" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic and interfere with the normal propagation of aquatic life, wildlife, or preclude the legitimate uses of any waters of the Commonwealth.

[1. Long lived toxics means toxic substances that are subject to bio-accumulation, bio-concentration, synergistic, and antagonistic characteristics, and are persistent in the environment.]

[2. Short lived toxics means toxic substances that express an acute or high degree non-persistent effect.]

(ee) "Warmwater aquatic habitat" means any surface water and associated substrate capable of supporting indigenous warmwater aquatic life.

[(ff) "Watercourse or stream" means a part of a well defined channel in which water flows continuously or seasonally and which is a surface manifestation of the table. A watercourse is described as having a reasonably well defined channel, with bed, banks, and flow.]

(2) Abbreviations used in water quality regulations:

[(a) BOD<sub>5</sub> means five (5) day biochemical oxygen demand;]

[(b) [(b)] °C means degree(s) Celsius [Centigrade];]

[(c) COD means chemical oxygen demand;]

[(d) DO means dissolved oxygen;]

[(b) EPA—See U. S. EPA;]

[(c) [(e)] °F means degree(s) Fahrenheit;]

[(f) FWPCA means Federal Water Pollution Control Act as amended;]

[(d) [(g)] mg/l means milligrams per liter (same as ppm);]

[(e) NPDES means National Pollutant Discharge Elimination System;]

[(h) NTU means nephelometric [nephelometric] turbidity unit;]

[(f) [(i)] pCi/l means picocuries per liter;]

[(g) [(j)] ppm means part(s) per million (assuming unit density, same as mg/l);]

[(k) TDS means total dissolved solids;]

[(l) TSS means total suspended solids;]

[(h) [(m)] ug/l means micrograms per liter;]

[(i) [(n)] U.S. EPA means the United States Environmental Protection Agency.]

Section 2. Non-degradation. (1) It is the purpose of these regulations to safeguard the waters of the Commonwealth, for their designated uses, to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution.

(2) The state water quality standards and continuing planning process designed to provide for the protection of existing water quality and/or the upgrading or enhancement of water quality in all waters of the Commonwealth shall serve as the method for implementation of this policy.

(3) The implementation of this policy shall conform to 40 CFR 130.17 to the extent allowed by KRS 224.020. [It is recognized that some waters may have higher existing

quality than established standards. The criteria and standards shall not be construed as permitting the degradation of these higher quality waters.]

(4) No degradation shall be allowed in outstanding resource waters to the extent that: [No degradation shall be allowed in high quality waters which constitute outstanding resource waters.]

(a) The introduction of specific pollutants exceeds the criteria established pursuant to Section 8(2) of 401 KAR 5:031; or

(b) The legitimate beneficial uses of these waters are impaired.

[(5) Exceptions to this section are permissible only after full satisfaction of the intergovernmental coordination and public participation provisions required to lower a segment designation due to necessary and justifiable economic or social development.]

Section 3. Withdrawal of Contaminated Water. It is recognized that waters will, on occasion, not meet [exhibit characteristics less desirable than] the standards and criteria established in these regulations. Withdrawal and subsequent discharge of these waters without alteration of the physical, or chemical characteristics [at existing withdrawal water quality characteristics] into the same or similar water [a] body [of water not meeting water quality standards] will not be considered a violation of these regulations. The department will determine effluent criteria and limitations in these situations based on the quality of the raw and receiving waters [on a case-by-case basis]. The department retains the right[s] to require modification under the provisions of 401 KAR 5:035, Section 1, [to best available control technology] if water quality characteristics so dictate.

Section 4. Sample Collection and Analytical Methodology. [(1)] Sample and analytical procedures [collection] will be conducted in a manner consistent with recommendations in "Standard Methods for the Examination of Water and Wastewater" (latest [current] edition), "Methods for Chemical Analysis of Water and Wastes" (EPA), and other methods as determined by the department.

[(2)] Analytical methodology will be those recommended in 40 CFR 136 and other methods approved by the department.]

Section 5. The provisions of this regulation shall be unseverable from the provisions of 401 KAR 5:026, 401 KAR 5:031, and 401 KAR 5:035.

C. FRANK HARSCHER III, Secretary

ADOPTED: November 14, 1979

RECEIVED BY LRC: November 15, 1979 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES  
AND ENVIRONMENTAL PROTECTION  
Bureau of Environmental Protection  
Division of Water Quality  
As Amended

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 224.020, 224.060

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: This regulation [is pursuant to KRS 224.020 and 224.060 and] sets forth water quality standards which consist of designated legitimate uses of the waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. Allowance for mixing zones and criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws.

Section 1. Mixing Zones. The following guidelines are applicable in determining all mixing zones: (1) The department shall, *on a case-by-case basis*, specify definable, geometric limits for mixing zones. [including] *Applicable limits shall include but may not be limited to* the linear distances from the point of discharge, surface area involvement, [and] volume of receiving water, *and* taking into account other nearby mixing zones.

(2) *The mixing zones shall be free from pollutants which are in excess of 0.44 times the 96 hour LC<sub>50</sub> for a representative indigenous aquatic organism.*

[(2) No mixing zone shall be provided for toxic substances including, but not limited to aldrin, chlordane, DDT, dieldrin, heptachlor, kepone, mercury, mirex, polychlorinated biphenyls, silvex, and toxaphene.]

(3) The location of a mixing zone shall not [significantly] interfere with spawning areas, nursery areas, fish migration routes, *public* [potable] water supply intakes, bathing areas, nor preclude the *free* passage of fish or other aquatic life [between a stream and its tributaries].

(4) *Whenever possible the [A] mixing zone shall not exceed one-third (1/3) of the width or cross-sectional area of the receiving [water in a] stream, and in no case shall exceed one-half (1/2) of this volume* [unless the department determines that a larger mixing zone will not preclude the designated uses of the receiving waters].

(5) In lakes and other surface impoundments, the [combined] volume of a [all] mixing zone[s] shall not affect in excess of ten (10) percent of the volume *of that portion* of the receiving waters *available for mixing* [unless the department determines that a larger mixing zone will not adversely affect the designated uses of the receiving bodies of water].

(6) In all cases, a mixing zone must be limited to an area or volume which will not adversely alter the *legitimate* uses of the receiving water; nor shall a mixing zone be so large as to adversely affect an [entire] established community of aquatic organisms.

Section 2. Nutrient Limits. (1) In surface impoundments and their tributaries where eutrophication problems

may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the department.

(2) The affected surface waters will be designated as nutrient limited.

Section 3. Minimum Criteria Applicable to all Surface Waters. The following minimum water quality criteria are applicable to all surface waters. [These criteria are also required in the mixing zone.] Surface waters shall not be aesthetically or otherwise degraded by substances that:

(1) Settle to form objectionable deposits;  
(2) Float as debris, scum, oil, or other matter to form a nuisance;

(3) Produce objectionable color, odor, taste, or turbidity;

(4) Injure, be toxic to or produce adverse physiological or behavioral responses in humans, fish, shellfish, and aquatic life;

(5) Produce undesirable aquatic life or result in the dominance of nuisance species;

(6) Cause the following changes in radionuclides:

(a) Cause the gross total alpha particle activity (including radium-226 but excluding radon and uranium) to exceed fifteen (15) pCi/l;

(b) Cause combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross particle activity does not exceed five (5) pCi/l);

(c) Cause the concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

(d) Cause the concentration of tritium to exceed 20,000 pCi/l;

(e) Cause the concentration of total Strontium-90 to exceed eight (8) pCi/l.

Section 4. Use Classifications and [their] Associated Criteria. Surface waters may be designated as having one (1) or more of the following *legitimate* [identified] uses and associated use criteria [by the department in accordance with 401 KAR 5:026 and after public hearings]. The classifications in Sections 5, 6, 7 and 8 *include* [constitute] the most common usage of surface waters *within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters.* [but other legitimate uses shall not be excluded.] The criteria in Section 3 and the indicated use criteria represent minimum conditions necessary to protect designated surface waters for that use. [Water having a specified use must, as a minimum, meet the specific criteria for that use in order to protect that use.]

[Section 5. Agricultural Use. The values in Table I are maximum allowable concentrations of substances necessary in streams for the protection of agricultural uses.]



[Table I

## Agricultural Criteria

Contaminant	Maximum Concentration Level
Arsenic	0.1 mg/l
Beryllium	0.1 mg/l
Cadmium	0.05 mg/l
Chromium, as Hexavalent	0.1 mg/l
Copper	0.2 mg/l
Fluoride	2 mg/l
Iron	3.5 mg/l
Lead	0.1 mg/l
Manganese *	0.2 mg/l
Mercury	0.01 mg/l
Nickel	0.2 mg/l
Nitrates & Nitrites (NO <sub>3</sub> as N plus NO <sub>2</sub> as N)	100 mg/l
pH	6.0 - 9.0
Pesticides	
Chlordane	0.003 mg/l
Chlorophenoxy Herbicides	
2,4-D	.02 mg/l
2,45-T	.002 mg/l
Silvex	.03 mg/l
Demeton	0.1 mg/l
Endosulfan	0.1 mg/l
Guthion	0.1 mg/l
Heptachlor	0.1 mg/l
Lindane	.004 mg/l
Malathion	0.1 mg/l
Methoxychlor	0.1 mg/l
Mirex	0.1 mg/l
Parathion	0.1 mg/l
Selenium	0.05 mg/l
Zinc	2 mg/l

\* This standard is only applicable where agricultural lands are used to grow acidiphilic plants over extended periods of time, utilizing irrigation technology; and where soil pH is less than 6.0.]

Section 5. [6.] Aquatic Life. (1) Warmwater aquatic habitat. The following parameters and [their] associated criteria are for the protection of productive [, reproducing] warmwater aquatic communities, fowl, animal wildlife, arborous growth, agricultural, and industrial uses:

(a) [Alkalinity.] Natural alkalinity as CaCO<sub>3</sub> shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l CaCO<sub>3</sub>, no reduction below the natural level is allowed. Alkalinity shall not be reduced to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than 6.0 nor more than 9.0 and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed 31.4 degrees Celsius [Centigrade] (eighty-nine (89) degrees Fahrenheit):

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The maximum temperature rise other than the effects of a mixing zone shall not exceed the natural temperature

by 2.8 degrees Celsius [Centigrade], (five (5) degrees Fahrenheit), with a maximum rate of change not to exceed one (1) degree Celsius [Centigrade], (1.8 degrees Fahrenheit), [degrees] per hour. The department will maintain guidelines for maximum daily average temperatures based on available data. The department may determine that deviations from these guidelines will be allowed upon the submission of adequate supporting data on naturally occurring temperatures for a specific location. Furthermore, as a guideline, the water temperature for all surface waters should not exceed the maximum limits shown in the following table:

Table I [II]  
Stream Maximum Temperature  
for Each Month in °F and °C

Month	°F	°C
January	50	10.0
February	50	10.0
March	60	15.6
April	70	21.1
May	80	26.7
June	87	30.6
July	89	31.7
August	89	31.7
September	87	30.6
October	78	25.6
November	70	21.1
December	57	13.9

3. The allowable temperature increase in impounded waters shall be limited to 1.7 degrees Celsius [Centigrade], (three (3) degrees Fahrenheit), above the natural seasonal norm.

(e) Dissolved oxygen:

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average [and should be maintained] and at no time should the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at *representative depths in other* [a depth of five (5) feet in] waters [having a total depth of greater than ten (10) feet].

(f) Solids:

1. Total dissolved solids: Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids: Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia: The concentration of the *un-ionized* [unionized] form shall not be greater than 0.05 mg/l at any time in stream after mixing as illustrated in the table entitled "Instream Ammonia-N Concentrations," filed herein by reference [reference]. Copies may be obtained from the Division of Water Quality, 1065 Highway 127 South, Century Plaza, Frankfort, Kentucky 40601.

(h) Toxics [substances]:

1. The allowable instream concentration of toxic materials [substances] which are [short-lived or which have] *noncumulative* [non-cumulative] and *nonpersistent* [effects] shall not exceed 0.1 of the ninety-six (96) hour median *lethal concentration* [tolerance] (LC<sub>50</sub>) [limits] of a

representative indigenous aquatic organism.

2. The allowable instream concentration of toxic substances, including pesticides, [which are long-lived] shall not exceed 0.01 of the ninety-six (96) hour median lethal concentration [tolerance limit] (LC<sub>50</sub>) of a representative indigenous aquatic organism.

[3. Hydrogen sulfide (undissociated). The hydrogen sulfide concentrations shall not exceed 2 mg/l.]

[4. Chlorine, total residual. The total residual chlorine shall not exceed ten (10) ug/l.]

3. [5.] Maximum allowable concentrations for specific parameters are outlined in Table II [III].

Table II  
Warmwater Aquatic Habitat Criteria<sup>1</sup>

Contaminant	Maximum Concentration Level
Arsenic	50 ug/l
Beryllium	11 ug/l soft water <sup>2</sup> 1100 ug/l hard water <sup>2</sup>
Cadmium	4.0 ug/l soft water <sup>2</sup> 12.0 ug/l hard water <sup>2</sup>
Chlorine, total, residual	10 ug/l
Chromium	100 ug/l
Cyanide, Free	5 ug/l
Hydrogen Sulfide (undissociated)	2 ug/l
Iron	1.0 mg/l <sup>3</sup>
Mercury	0.05 ug/l
Phthalate Esters	3 ug/l
Phenol	5 ug/l

<sup>1</sup>Metal criteria, for purposes of this regulation, are total metals to be measured in an unfiltered sample.

<sup>2</sup>Soft water has an equivalent concentration of calcium carbonate (CaCO<sub>3</sub>) of 0 to 75 mg/l, and hard water has an equivalent concentration of calcium carbonate (CaCO<sub>3</sub>) of over 75 mg/l.

<sup>3</sup>For low flow streams, the daily average total iron concentration is limited to 3.5 mg/l when it is established that there will be no damage to aquatic life.

[Table III  
Warmwater Aquatic Habitat Criteria

Contaminant	Maximum Concentration Level
Metals:	
Arsenic	50 ug/l
Beryllium	11 ug/l soft water <sup>1</sup> 1100 ug/l hard water <sup>1</sup>
Cadmium	4.0 ug/l soft water <sup>1</sup> 12 ug/l hard water <sup>1</sup>
Chromium as Hexavalent	100 ug/l
Copper	0.1 times 96 hour LC50
Iron	1.0 mg/l <sup>2</sup>
Lead	0.01 times 96 hour LC50
Mercury	0.05 ug/l
Nickel	0.1 times 96 hour LC50
Selenium	.01 times 96 hour LC50
Silver	.01 times 96 hour LC50
Zinc	.01 times 96 hour LC50
Organics	
Cyanide	5 ug/l
Phenol	10 ug/l
Phthalate Esters	3 ug/l
Pesticides <sup>3]</sup>	

[<sup>1</sup> Soft water has an equivalent concentration of calcium carbonate of 0 to 75 mg/l, and hard water has an equivalent concentration of calcium carbonate of over 75 mg/l.]

[<sup>2</sup> For low flow streams, the daily average total iron concentration is limited to 3.5 mg/l when it is established that there will be no irretrievable damage to aquatic life.]

[<sup>3</sup> Pesticides are considered toxic substances and are regulated according to toxic substance guidelines.]

(2) Coldwater aquatic habitat. The following parameters and their associated criteria are for the protection of productive [, reproducing] coldwater aquatic communities and "put and take" trout streams. All of the criteria adopted for the protection of warmwater aquatic life also apply to the protection of coldwater habitats with the following additions:

(a) Dissolved oxygen:

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

(c) Total chlorine residual. The total chlorine residual shall not exceed two (2) ug/l as an instream value.

Section 6. [7.] Domestic Water Supply Use. Maximum allowable concentrations to be applicable at the point of withdrawal for use for domestic water withdrawal from surface water sources are specified [outlined] in Table III [IV]:

Table III  
Domestic Water Supply Source Criteria<sup>1</sup>

Contaminant	Maximum Concentration Level
Barium	1 mg/l
Chloride, Total	250 mg/l
Chromium, Total	0.05 mg/l
Color	75 Platinum-Cobalt Color Units
Copper	1 mg/l
Fecal Coliform	2000/100 ml (Geometric mean)
Fluoride, Total	1 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.002 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO <sub>3</sub> -N, as Total)	10 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Sulfate, Total	250 mg/l
Zinc	5 mg/l
Total Dissolved Solids	750 mg/l

<sup>1</sup>See note 1 in Table II



[Table IV  
Domestic Water Supply Source Criteria

Contaminant	Maximum Concentration Level
Arsenic	0.05 mg/l
Ammonia (NH <sub>3</sub> )	.05 mg/l
Barium	1 mg/l
Cadmium	0.010 mg/l
Chromium, Total	0.05 mg/l
Color	75 Platinum-Cobalt Color Units
Copper	1 mg/l
Cyanide	.005 mg/l
Fecal Coliform	2000/100 ml (Geometric Mean)
Iron	0.3 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.002 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO <sub>3</sub> -N) as Total	10 mg/l
Pesticides	
Chlordane	0.003 mg/l
Chlorophenoxy Herbicides	
2,4-D	0.1 mg/l
2, 4, 5-TP	0.01 mg/l
Endrin	0.0002 mg/l
Lindane	0.004 mg/l
Methoxychlor	0.1 mg/l
Toxaphene	0.005 mg/l
pH	6.0 - 9.0
Phenol	0.001 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Zinc	5 mg/l
Fluoride, Total	1 mg/l
Chloride, Total	250 mg/l
Sulfate, Total	250 mg/l
Total Dissolved Solids	750 mg/l]

Section 7. [8.] *Recreational Waters [Use].* (1) *Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31. [Bathing waters. Bathing waters are waters suitable for swimming and which provide facilities operated during the recreation season of May 1 through October 31.]*

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in more than ten (10) percent of all samples taken during the month; these limits are applicable during the recreation season.

(b) pH shall be between 6.0 to 9.0 and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

[(2) *Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation without established swimming facilities operated during the recreation season of May 1 through October 31.]*

[(a) Fecal coliform content shall not exceed 1,000 colonies per month; nor exceed 2,000 colonies per 100 ml in more than ten (10) percent of all samples taken during a month.]

[(b) The pH shall be maintained between 6.0 to 9.0 and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.]

(2) [(3)] *Secondary contact recreation water. Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health [as a result of water quality] during the recreation season of May 1 through October 1.*

(a) Fecal coliform shall not exceed 5,000 colonies per 100 ml in more than ten (10) percent of the samples taken during any thirty (30) day period.

(b) pH shall be between 6.0 to 9.0 and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 8. [9.] *Outstanding Resource Waters.* ["Outstanding resource waters" is a] *This classification category includes [covering] certain unique waters of the Commonwealth [the criteria for which will be established by the department upon designation pursuant to this section].*

(1) *Water for inclusion:*

(a) *Automatic inclusion. Any surface waters designated under the Kentucky Wild Rivers Act, [and] the Federal Wild and Scenic Rivers Act, or identified under the Kentucky Nature Preserves Act, or that support federally recognized rare or endangered species shall automatically be included in this category.*

(b) *Permissible consideration. Other surface waters may be included in this category as determined by the department providing: [under the procedures of subsection (2) if:]*

1. *The [They are] surface waters flow [flowing] through or are [a] bounded by state or federal forest land, or of exceptional aesthetic or ecological value or within the boundaries of national, state, or local government parks, or [.]*

[2. *An outstanding resource water may be designated if it meets one (1) of the following criteria:]*

[a. *The waters] are a part of a unique geological or historical area recognized by state or federal designation. [:]*

2. *They [the waters] are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:*

a. *[b.] Supports a diverse or unique aquatic flora and fauna. [ and has a species diversity index greater than 3.0 using methods recommended by the department; supports a generally recognized unique species either plant or animal:]*

b. *[p] Possesses physical or chemical characteristics that provide an unusual and uncommon aquatic habitat. [; and]*

c. *[p] Provides an unique aquatic environment within a physiographic region.*

(2) [Proposal for] *Outstanding resource waters designation: The classification of certain waters as outstanding resource waters [may be applied by the department to certain waters following a public hearing. The proposal shall be published in accordance with KRS 424.110 to 424.120 in each county containing any part of the watershed to be affected by the classification designation. Water quality criteria must be proposed prior to consideration of such waters for inclusion under this classification. Proposals for classifying certain waters as outstanding resource waters] shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The department shall determine water quality criteria for these waters on a case specific basis. [Such proposals shall be filed with the*

department and their adequacy determined promptly with any deficiencies noted in writing.]

(3) Determination of classification:

(a) Any person may present a [application or] proposal to classify certain waters *under this section*. [as outstanding resource waters shall be evaluated by a technical evaluation committee appointed by the secretary.] The department [committee] will evaluate the proposal [and make recommendations to the secretary regarding classification]. The following shall be considered:

1. Existing water quality;
2. Current use;
3. Aesthetic, biological, morphological and habitat characteristics of the waters;
4. Occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique biota;
5. Economic and social consequences of the proposed classification;
6. Other justification given for the proposed classification.

(b) After considering *all of* the [application, the record of the hearing, recommendations of the technical committee, and other] pertinent data, *a reclassification, if appropriate, shall be made pursuant to 401 KAR 5:026, Section 6*. [the secretary shall either grant or deny the proposal in whole or in part and designate the waters accordingly.]

Section 9. [10.] *Variances* [Exceptions]. (1) Waters for inclusion. The department may grant a *variance* [an exception] to classification[s] criteria upon adequate demonstration that maintenance of water quality *criteria now applicable are not attainable but* [necessary for] the *use classification is still appropriate* [preservation and propagation of desirable or indigenous species of aquatic biota and secondary contact recreation is not attainable]. This determination must be made on a case-by-case basis with respect to a specific stream segment following an analysis of each area. The analysis must show that the necessary water quality cannot be reasonably achieved due to *economic and/or technological limitations and/or naturally occurring poor water quality*. All exceptions will be temporary and subject to review at least every three (3) years.

(2) Designation under this section shall be final orders of the department and may be appealed pursuant to KRS 224.085.

Section 10. *The provisions of this regulation are unseverable with 401 KAR 5:026, 401 KAR 5:029, and 401 KAR 5:035.*

Section 11. 401 KAR 5:025 is hereby repealed.

C. FRANK HARSCHER III, Secretary

ADOPTED: November 14, 1979

RECEIVED BY LRC: November 15, 1979 at 1:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES  
AND ENVIRONMENTAL PROTECTION  
Bureau of Environmental Protection  
Division of Water Quality  
As Amended

401 KAR 5:035. [Use classification of waters;] Treatment requirements; compliance.

RELATES TO: KRS 224.020, 224.060

PURSUANT TO: KRS 13.082, 224.033(17)

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: [To implement KRS 224.020. This regulation applies to the classification found in Sections 3 through 9 of 401 KAR 5:025 to certain waters. Additionally,] This regulation *defines minimum treatment requirements* and mandates that all persons discharging pollutants through point sources shall apply *these measures, or more stringent as required, to meet water quality standards* ["best practical control technology" and best available technology economically "achievable"] by certain dates.

[Section 1. (1) Except as otherwise provided by law, all waters shown on the map "Streams of Kentucky" prepared by the Kentucky Department of Commerce, Frankfort, Kentucky, 1973, hereby incorporated by reference, scale one (1) inch equals ten (10) miles are classified for all uses in accordance with Sections 3 through 9 of 401 KAR 5:025.]

[(2) All discharges to waters not shown on the map described in subsection (1) of this section shall meet all use classifications at the point where those waters join the waters shown on the map.]

Section 1. [2.] *Applicability. The provisions of this regulation shall apply to all discharges to surface waters of the Commonwealth as defined in 401 KAR 5:029, Section 1(1)(bb).* [(1) All persons who discharge through point sources, including but not limited to any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, shall satisfy the requirements of this section.]

[(2) All persons who discharge through a point source shall apply the best practicable control technology considering such factors as the total cost of the application of such technology in relation to the effluent reduction benefits to be achieved from such application, the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact and such other factors as the department considers appropriate to treatment facilities not later than July 1, 1977.]

[(3) All persons who discharge through a point source shall apply the best available technology economically achievable by July 1, 1983. In determining what is the best available technology economically achievable, the factors in subsection (2) of this section shall be considered, and in addition, any control measures and practices available to eliminate the discharge of pollutants, taking into account the cost of eliminating the discharge of pollutants.]

[(4) Where coliform bacteria are present in a discharge, disinfection shall be required in accord with Section 4 of 401 KAR 5:031.]

*Section 2. Treatment Requirements. (1) All persons who discharge through a point source shall, as a minimum, apply the secondary treatment, or equivalent, considering such factors as the total cost of the application of such technology in relation to the effluent reduction benefits to be achieved; the age of the equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; non-water quality environmental impact; and such other factors as the department considers appropriate to treatment facilities not later than July 1, 1977.*

*(2) All persons who discharge through a point source shall apply the best available waste control technology, or equivalent, not later than July 1, 1984, or three (3) years following the promulgation of applicable categorical or water quality criteria effluent limitations in the Federal Register. In determining what is best available waste-control technology, the factors in subsection (1) of this section shall be considered. In addition, any operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage may be imposed in addition to or in the absence of other applicable standards and limitations.*

[Section 2. [3.] All existing facilities shall satisfy applicable sections of this regulation or be committed to a compliance schedule which will achieve the same results. New facilities shall satisfy Section 1 upon commencing operations.]

*Section 3. The department may deny, revoke, or modify a permit to any applicant where the discharge in the judgment of the department does not conform to the policy of the Commonwealth of Kentucky as set forth in KRS 224.020.*

[Section 3. [4.] (1) All permits on existing facilities shall be reviewed to insure that they shall satisfy the requirements of Sections 1 and 2. When the permit for an existing facility is reviewed, the person(s) responsible shall be notified to submit an application for a permit anew with such supporting information as may be required by the department.]

[(2) Upon notice of review, persons failing to submit a complete application within sixty (60) days shall be in violation of this regulation unless an extension is granted by the department.]

*Section 4. The provisions of this regulation shall be unseverable with the provisions of 401 KAR 5:026, 401 KAR 5:029, and 401 KAR 5:031.*

[Section 4. [5.] The department shall refuse to issue a permit to any applicant where the discharge in the judgment of the department does not conform to the policy of the Commonwealth of Kentucky as set forth in KRS 224.020.]

C. FRANK HARSCHER III, Secretary

ADOPTED: November 14, 1979

RECEIVED BY LRC: November 15, 1979 at 1:30 p.m.

EDUCATION AND ARTS CABINET  
Department of Elementary and Secondary Education  
Bureau of Instruction  
As Amended

704 KAR 20:235. Learning and behavior disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 13.082, 156.030, 156.070, 156.160

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the Kentucky State Plan for the Approval of Preparation Programs for the Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children; learning and behavior disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky State Plan for the Approval of Preparation Programs for the Certification of Professional School Personnel.

(2) The provisional certificate for teachers of exceptional children; learning and behavior disorders shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certificate for teachers of exceptional children; learning and behavior disorders shall be valid at any grade level for the instruction of exceptional children with learning and behavior disorders and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

(4) The provisional certificate for teachers of exceptional children; learning and behavior disorders shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the approved curriculum. The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours

additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

(5) (a) The provisional certificate for teachers of exceptional children; learning and behavior disorders, limited in validity to grades seven (7) through twelve (12), may be issued to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed the approved special education component of twenty-seven (27) semester hours for learning and behavior disorders and in addition thereto, two (2) sequential courses in the teaching of reading and two (2) courses in mathematics for elementary school teachers.

(b) The provisional certificate for teachers of exceptional children; learning and behavior disorders, valid for grades seven (7) through twelve (12), may be issued for a one (1) year period to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed at least six (6) semester hours credit from the special education component of the curriculum described above and a three (3) semester hour course in reading. As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for subsequent one (1) year periods upon completion of at least six (6) semester hours credit each year from the approved curriculum.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: October 24, 1979

RECEIVED BY LRC: November 2, 1979 at 11:45 a.m.

**DEPARTMENT FOR HUMAN RESOURCES**  
Bureau for Social Services  
As Amended

**905 KAR 1:085. Foster care review.**

RELATES TO: KRS 199.465

PURSUANT TO: KRS 13.082, 194.050, 199.465

EFFECTIVE: December 5, 1979

NECESSITY AND FUNCTION: This regulation is required by KRS 199.465. It serves to set forth minimum standards for a periodic review of children placed in foster family homes by the Department for Human Resources.

Section 1. The method for periodic review shall include but is not limited to the following:

(1) (a) A case conference shall be held within one (1) week of the child's placement in a foster home. The purpose of the case conference is to initiate a structured treatment plan to insure that case plans and activities progress toward permanency for the child. A [The] team leader is responsible for scheduling and conducting the initial case conference. Attendance at the initial case conference may include but is not limited to the following: the team leader, the family services worker, the foster care worker, the natural parents, the child, the foster parents, and with the

permission of the team leader, other interested parties. The consent of the natural parents is required for the attendance of the foster parents. [In addition to the team leader, the initial case conference may be attended by the family services worker, the foster care worker, the natural parents, and if appropriate, the child. At the request of the team leader, other staff within the bureau or professionals outside the bureau who have knowledge of the family may attend. With the permission of the natural parents, the foster parents and/or relatives of the natural parents may attend the initial case conference.]

(b) The natural parents shall be notified of conferences and of their right to have an attorney present during these conferences. Notification shall include information on the purpose, time, and location of the conference and on who will be in attendance. Notification must be given early enough to insure that the natural parents will have an opportunity to attend. Conferences must be scheduled at mutually agreed upon times and locations.

(c) [(b)] When the foster parents do not attend, they will be involved on an [the] individual basis through the foster care worker. The foster parents' comments will be sought concerning the objectives of the child's treatment plan and potential problems or barriers to treatment which must be considered during the case conference. After the initial case conference, the foster parents will receive a copy of the child's treatment plan.

(d) [(c)] During the initial case conference, the treatment plan [program] shall be designed. The overall goal of the plan [program] is to give the natural parents except those who have made the decision to voluntarily terminate their parental rights, [who desire the return of their child,] all the support and service necessary for them to resume the care of their child. Treatment plans shall be formulated for the natural parents and the child and shall include the following:

1. A list of the specific problems the parents and/or child are experiencing which serve as barriers to the return of the child or limitations to the optimal development of the child;

2. A list of the specific problems the parents and/or the child are experiencing which are not barriers to the return of the child but are limitations to the child's optimal development;

[2. The objectives which will lead to the resolution of the specific problems the parents and/or child are experiencing which serve as barriers to the return of the child or limitations to the optimal development of the child;]

3. A separate listing of the objectives which will lead to the resolution of each set of specific problems listed in accordance with subparagraphs 1 and 2 above;

4. [3.] A list of services to be provided to attain these objectives, and the person(s) responsible for providing these services;

5. [4.] The identified objectives for which the parents will assume responsibility;

6. [5.] The time frame in which the objectives should be accomplished.

(e) [(d)] In instances where natural parents are unwilling or unable to participate in conferences and/or the drawing up of the treatment plan:

1. The family treatment plan will be drawn up to serve as a case goal activity guide.

2. The natural family will be informed that the conference was held and informed of the content of the discussion and the proposed treatment plan.

3. The worker must give the natural family a copy of the treatment plan and inform them of their right to request another conference to revise the treatment plan. The

*request for an additional case conference to revise the proposed initial treatment plan should be made within ten (10) days of receipt of the proposed initial treatment plan. If the natural parents desire such a conference, it shall be held within ten (10) working days of their request. [the date for the next scheduled conference.]*

(f) [(e)] The plan is signed by all conference participants. If the natural parents disagree with part of the treatment plan, their specific objections should be noted *on the treatment plan on the same line as the objectionable component* [beside their signatures]. If the parents are dissatisfied with the content of the treatment plan or with the substance of the services rendered, the client may file a [service] complaint within *the bureau's service complaint system within ninety (90) days of the case conference, or within ninety (90) days of the act or omission complained of*, to the Commissioner, Bureau for Social Services. During the case conferences, the natural parents shall be informed of their right to file a service complaint.

(g) [(f)] During the first six (6) months of placement, ongoing case conferences are to be held as needed. *The parents will receive notice of the conferences as provided in Section 1(1)(a).* The purpose of the ongoing case conference is to assess progress, to assure that there is adherence to the time frames included in the original treatment plan, to alter treatment plans and visitation contracts, and to insure that all necessary services are being provided to the child, natural family, and foster family. *Treatment plans and visitation contracts may be modified as necessary. Any alterations in the treatment plans and visitation contracts must be signed by the required conference participants, with any objections of the parents noted as provided in Section 1(1)(f).*

(h) [(g)] When the child has been in placement for six (6) months, a conference is to be held. *The parents will receive notice of the conference as provided in Section 1(1)(a).* Although the treatment plan [program] may extend beyond six (6) months, a decision on the permanent plan for the child must be established at this time. *Attendance at the six (6) month case conference may include but is not limited to those persons provided for in Section 1(1)(a).*

(i) [(h)] The frequency of case conferences following the six (6) month case conference will be established as needed according to the treatment plan. The case of every child must be reviewed by the team leader and the worker(s) at least every six (6) months. *These conferences will be held for the purpose of assessing progress, assuring adherence to the time frames included in the treatment plan, altering treatment plans and visitation contracts, and insuring that all necessary services are being provided to the child, the natural family, and the foster family.*

(2) (a) *Frequency and intensity of the casework contract should be provided for in the treatment plan. However, all children should be visited monthly by the caseworker except when otherwise indicated by the treatment plan for the child or when circumstances are beyond the caseworker's control.*

(b) [(2)] Ongoing casework and support services that are set forth in the review and planning process shall be provided to best meet the needs of the child and the natural family. These services will vary in accordance with the individual needs of the child and the family. Services may include, but are not limited to, the following: providing medical care, effecting behavioral change, improving relationships with adults or peer groups, improving school adjustment, maintaining developmental charts, and utilizing all available community resources. [The original treatment plan may be modified as necessary.]

(3) Visitation contracts will be established during the initial case conference and will be signed by the natural parents, the worker(s), the team leader, the foster parents, and if appropriate, the child. The frequency of parent/child visits will vary in accordance with the needs of the case. Such factors as the *treatment* [permanent] plan for the child and the desires of the parents and the child will be considered.

(a) When the plan for the child is return to the natural parents, the following visitation guidelines should be considered:

1. [At least] One (1) visit [should occur] within the first week of placement;

2. Visits [should occur at least] every two (2) weeks.

3. *Extended visits with the natural family as appropriate; [As the projected date approaches for the return of the child to the natural home, extended visits should be arranged.]*

4. *All visits between the natural parents and the child will be documented in the case record.*

(b) The visitation contract may include the following items:

1. Time and place schedule;

2. Frequency of visits;

3. Transportation details;

4. Individuals other than natural parents whom the child may visit (i.e., siblings, relatives, etc.);

5. Special requests of the natural parents or foster parents;

6. Allowance of phone calls or letters between parent and child; set times for phone calls;

7. Special responsibilities of any of the parties involved in visitation.

Section 2. The department shall report to the committing court the status and planning for children who are committed to the department as dependent, neglected, or abused and placed in foster family homes by the end of one (1) month and by the end of seven (7) months of the child's placement. Included in the initial report will be the established goal for the case, a copy of the treatment plan for the child and the family, and a copy of the visitation contract. By the end of the seventh month, the results of the treatment program and decision regarding a permanent plan for the child shall be reported to the court. Permanent plans that shall be considered for the child at the end of the treatment program include, but are not limited to, the following: the return of the child to the home of the natural parents; permanent placement with relatives; termination of parental rights for the purpose of adoption; *subsidized adoption*; or, [and] under demanding circumstances, permanent substitute foster care. If a definite decision regarding a permanent plan for the child had not been reached, the reasons for absence of a decision shall be reported.

Section 3. *The placement of the foster child in a foster family home or other facility shall be reviewed at the initial case conference and at each subsequent case conference. Any change in foster placement shall promote a discussion between foster care worker and foster parents regarding treatment plans for child.*

CHARLES T. CAIN, Commissioner

J. E. DeSHAZER, Secretary

ADOPTED: November 20, 1979

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

# Proposed Amendments

## SECRETARY OF CABINET Kentucky Retirement Systems (Proposed Amendment)

### 105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.702, 78.510 to 78.852

PURSUANT TO: KRS 13.082, 16.576, 16.640, 61.559, 61.645, 78.780

NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545, require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation earned on or after July 1, 1979 [1978] shall be as follows:

KRS 61.565 State Police Retirement System.....	17¼ [16½] %
KRS 61.656 Kentucky Employees Retirement System .....	7¼ %
KRS 61.565 County Employees Retirement System .....	7¼ %
KRS 61.592 Kentucky Employees Retirement System .....	19¼ %
KRS 61.592 County Employees Retirement System .....	16 %

Section 2. The interest rate on a recontribution of refund as provided under KRS 61.552 shall be six (6) percent compounded annually, except that the interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board shall be at the rate of zero (0) percent, if the refund is recontributed within a reasonable period of time.

Section 3. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate of three (3) percent.

Section 4. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, below, except:

(1) A SPRS, or KERS hazardous duty member who is age fifty (50) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if the employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE A

Years Required to Complete 30 Years Service	Percentage Payable
1	94.5 %
2	89.0 %
3	83.5 %
4	78.0 %
5	72.5 %

(2) A CERS hazardous duty member who is age fifty (50) or older and has attained twenty-five (25) years of service or would attain twenty-five (25) years of service prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE B

Years Required to Complete 25 Years Service	Percentage Payable
0	100 %
1	94.5 %
2	89.0 %
3	83.5 %
4	78.0 %
5	72.5 %

(3) A KERS or CERS non-hazardous member who is age fifty-five (55) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 30 Years Service	Percentage Payable
1	95.0 %
2	90.0 %
3	85.0 %
4	80.0 %
5	75.0 %
6	71.0 %
7	67.0 %
8	63.0 %
9	59.0 %
10	55.0 %

(4) A KERS or CERS non-hazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on SPRS or KERS hazardous early retirement eligibility, and would have attained thirty (30) or more years of service (fifteen (15) of which would be current service) on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table C in subsection (3) based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table D below based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A KERS or CERS non-hazardous member with CERS Hazardous Service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on CERS hazardous early retirement eligibility, and would have attained twenty-five (25) or more years of service on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table E based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE E

Years Required to Complete 25 Years Service	Percentage Payable
0	100%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(6) A SPRS or KERS hazardous member who dies prior to age fifty (50) and would have attained thirty (30) or more years of service (fifteen (15) or which would be current service) on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have benefits payable as determined from Table C in subsection (3) based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

(7) A CERS hazardous member who dies prior to age fifty (50) and has attained twenty-five (25) years of service or would have attained twenty-five (25) or more years of service on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have benefits payable as determined from Table E in subsection (5) based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time death.

TABLE G

Early Age	Normal Retirement Age	
	65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(8) Benefits paid in the event of death prior to retirement pursuant to subsections (1) through (7) of this section shall



be reduced, as required by KRS 61.640 and as determined in "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors" incorporated herein by reference.

Section 5. Conversion factors to be applied to determine immediate annuity which could be purchased by \$1,000 of contributions and interest after doubling as provided in KRS 16.576 and 61.559.

TABLE H

Non-Hazardous	Age	Male	Female
	65	\$ 8.229	\$ 7.432
	66	\$ 8.423	\$ 7.596
	67	\$ 8.628	\$ 7.767
	68	\$ 8.848	\$ 7.951
	69	\$ 9.087	\$ 8.147
	70	\$ 9.332	\$ 8.355
	71	\$ 9.605	\$ 8.565
	72	\$ 9.882	\$ 8.796
	73	\$10.180	\$ 9.042
	74	\$10.468	\$ 9.304
	75	\$10.792	\$ 9.567
	76	\$11.139	\$ 9.848
	77	\$11.510	\$10.149
	78	\$11.908	\$10.450
	79	\$12.286	\$10.775
	80	\$12.684	\$11.121
Hazardous	Age	Male	Female
	55	\$ 6.809	\$ 6.257
	56	\$ 6.899	\$ 6.349
	57	\$ 7.020	\$ 6.449
	58	\$ 7.150	\$ 6.546
	59	\$ 7.281	\$ 6.635
	60	\$ 7.419	\$ 6.745
	61	\$ 7.561	\$ 6.870
	62	\$ 7.692	\$ 7.002
	63	\$ 7.860	\$ 7.138
	64	\$ 8.039	\$ 7.279
	65	\$ 8.229	\$ 7.432
	66	\$ 8.423	\$ 7.596
	67	\$ 8.628	\$ 7.767
	68	\$ 8.848	\$ 7.951
	69	\$ 9.087	\$ 8.147
	70	\$ 9.332	\$ 8.355
	71	\$ 9.605	\$ 8.565
	72	\$ 9.882	\$ 8.796
	73	\$10.180	\$ 9.042
	74	\$10.468	\$ 9.304
	75	\$10.792	\$ 9.567
	76	\$11.139	\$ 9.848
	77	\$11.510	\$10.149
	78	\$11.908	\$10.450
	79	\$12.286	\$10.775
	80	\$12.684	\$11.121

MIM CLARK, General Manager

ADOPTED: November 15, 1979

APPROVED: JACK B. HALL, Secretary

RECEIVED BY LRC: December 12, 1979 at 12 noon

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

**CABINET FOR DEVELOPMENT**  
**Department of Fish and Wildlife Resources**  
**(Proposed Amendment)**

**301 KAR 3:053. Spring gun and archery season for wild turkey.**

RELATES TO: KRS 150.025, 150.175, 150.176, 150.305, 150.330, 150.360, 150.365, 150.390

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation pertains to the spring gun and archery season and limits for wild turkey. The Commissioner with the concurrence of the Commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. *This amendment is necessary to change season dates, open new counties, close others and specify hunting procedures and permitted weapons.*

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Seasons and Counties: *Season opens* [Opens] the third Saturday in April for *twelve (12)* [ten (10)] consecutive days[.] in Jackson; Owsley; Bath; Lee; Rowan; Pike, except Breaks Interstate Park; Letcher; Menifee; [and] Harlan and Butler Counties.

(2) All other counties and wildlife management areas are closed to wild turkey hunting unless specified below.

Section 2. Seasons on Wildlife Management Areas. (1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties. Season: any or [and] all Saturdays and Sundays in April [except April 1], depending upon military training priorities.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties. Season: opens the second Wednesday in April *through April 18* [for nineteen (19) consecutive days]. *The second segment opens April 26 through May 4.*

(3) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Season: opens the third Saturday in April for *twelve (12)* [ten (10)] consecutive days.

(4) Pine Mountain Wildlife Management Area located in Letcher County. Season: opens the third Saturday in April for *twelve (12)* [ten (10)] consecutive days.

(5) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. Season: April 19 and 20 and April 26 and 27 [21, 22, 28 and 29].

Section 3. Bag and Possession Limits for All Areas Open to Turkey Hunting. Only one (1) turkey gobbler with visible beard per hunter per calendar year shall be taken.

Section 4. Requirements and Restrictions for Gun and Archery Turkey Hunting in All Designated Counties and Wildlife Management Areas. (1) The use of dogs in turkey hunting is prohibited.

(2) Any hunters taking or attempting to take wild turkey must have in their possession a valid wild turkey permit, unless exempted by KRS 150.170(3), (5) or (6) (the resident owner of farmlands, his wife or dependent children; resident tenants or their dependent children residing upon said farmlands; residents sixty-five (65) years or older; and resident servicemen on furlough of more than three (3) days in



their county of legal residence). All persons except those exempted by KRS 150.170(3), (5) or (6), must have a valid annual Kentucky hunting license in addition to the wild turkey permit. All non-residents are required to possess an annual non-resident hunting license and a wild turkey permit.

(3) Residents of states that do not allow residents of Kentucky to hunt turkey during open seasons in those states are prohibited from hunting turkey in Kentucky.

(4) Turkey may be taken from one-half (1/2) hour before sunrise until 12 noon except at Land Between the Lakes and Fort Campbell Wildlife Management Areas, where hunting is allowed from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset. All hours are prevailing time.

(5) Turkey may be taken with the aid of hand or mouth operated calls, or both. Electronic calls are prohibited.

(6) Permitted and Prohibited Weapons. (See exceptions under Wildlife Management Areas.)

(a) Guns. Turkey may be taken with breech-loading shotguns, muzzle-loading shotguns, and muzzle-loading rifles. Shotguns must be no larger than 10-gauge or no smaller than 20-gauge. Fully automatic firearms are prohibited. Handguns are prohibited for taking turkeys except for muzzle-loading handguns on Pioneer Weapons Wildlife Management Area.

(b) Bows and arrows. Turkey may be taken with any longbows and compound bows which *do not have devices to hold an arrow at full draw without human aid* [are not fitted with any device designed to hold an arrow at full draw without human aid and are not capable of release by a triggering device]. Only barbed arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(c) Crossbows. Crossbows are permitted only on the Pioneer Weapons Wildlife Management Area. Crossbows must be of at least 100 [eighty (80)] pounds pull. Arrows must be barbed with broadhead points at least seven-eighths (7/8) inch wide.

(7) Mandatory turkey check stations. Any hunter harvesting a wild turkey must have it checked at the nearest check station or by the nearest available conservation officer no later than 6:00 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must complete the wild turkey permit and attach the hard copy to the turkey. The original [copy] will be retained by the check station operator or conservation officer.

(8) *Turkeys may be taken with the aid of artificial turkey decoys. Live turkeys may not be used as decoys.*

Section 5. Wildlife Management Area Regulations. (1) Land Between the Lakes Wildlife Management Area. Wild turkey may be taken on the Kentucky portion of Land Between the Lakes only in designated areas. Permits for the hunt are required and may be obtained free of charge after March 1 at the Golden Pond Information Office and at the North Information Station twenty-four (24) hours per day. Firearms transported in vehicles during authorized hunts must be unloaded. Target practice is prohibited. *Turkey* [Notwithstanding the provisions of 301 KAR 2:050, Section 3, turkey] may be taken with shotguns, including muzzle-loaders, no larger than 10-gauge or no smaller than 20-gauge; only Number 2 shot or smaller is permitted. Permitted archery equipment is the same as that listed in Section 4, subsection (6) (b) of this regulation. Rifles, crossbows and handguns are prohibited. Hunters are not required to check in or out, but all turkey taken must be

checked out and must be tagged with a valid state wild turkey permit and a Land Between the Lakes area tag provided free at the check station. Check stations will be located near the junction of The Trace and U.S. Highway 68, and on The Trace about one (1) mile south of Barkley Canal.

(2) Fort Knox Wildlife Management Area. Turkey hunting is restricted to military and civilian personnel assigned to or working on the post, except a limited number of off-post civilians will be permitted to hunt provided areas are available. Off-post civilian hunters must apply in person at the hunt control headquarters building, *Building 1327, Briggs Street, Fort Knox, beginning April 4 at 8:30 a.m.* [Fort Knox, Kentucky, on the Friday before any weekend during which they wish to hunt]. For more information call Area Code 502 624-7311 at Fort Knox. Turkey may be taken with shotguns no larger than 12-gauge or no smaller than 20-gauge and muzzle-loading rifles no smaller than .32 caliber firing a single projectile. Buckshot and slugs are prohibited. All turkeys harvested must be checked in at *Building 7334 by 2:00 p.m.* [a place designated by Fort Knox authorities].

(3) Pioneer Weapons Wildlife Management Area. Turkey may be taken with all weapons listed under Section 4, subsection (6) except for breech-loading shotguns. [Crossbows are permitted.]

(4) Fort Campbell Wildlife Management Area. Turkey hunting is restricted to persons who purchase a post combination hunting-fishing permit. Hunting spaces are limited by training priorities and are assigned on a first-come first-served basis. Those wanting to turkey hunt must apply in person twenty-four (24) hours prior to day of hunt at building 6645. For more information call Area Code 502 798-2175, 2176 or 2177 [2413, 3293 or 7393] at Fort Campbell. Turkey may be taken with *breech-loading shotguns and muzzle-loading shotguns no larger than 10 gauge or no smaller than 20 gauge using No. 2 or smaller shot.* Turkey may also be taken with longbows and compound bows [all weapons listed under Section 4, subsection (6), of this regulation].

CARL E. KAYS, Commissioner  
MIKE BOATWRIGHT, Chairman

ADOPTED: December 9, 1979

APPROVED: WILLIAM L. SHORT, Secretary  
RECEIVED BY LRC: December 10, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: The Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

#### DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

902 KAR 1:017. Amoxicillin trihydrate.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the Council to be therapeutically equivalent to specified brand name drugs

and pharmaceuticals. This regulation lists Amoxicillin Trihydrate pharmaceutical products by their generic name and brand names that have been determined by the Council to be therapeutically equivalent.

Section 1. Amoxicillin Trihydrate Capsule Pharmaceutical Products. The following amoxicillin trihydrate capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Amoxicillin Trihydrate 250 mg. Capsule Form:

(a) Amoxcill: H. L. Moore Drug Exchange;  
(b) Amoxicillin Trihydrate: Biocraft Laboratories, Federal/Premo, Murray Drug Corporation, Parke-Davis and Company, Parmed Pharmaceuticals, [Pierrel America,] Richie Pharmacal Company, Three P Products Corporation;

(c) Amoxil: Beechum Laboratories;  
(d) Larotid: Roche Laboratories;  
(e) Polymox: Bristol Laboratories;  
(f) Robamox: A. H. Robins Company;  
(g) Sumox: Reid-Provident;  
(h) Theda-Mox: Theda Corporation;  
(i) Trimox: E. R. Squibb and Sons;  
(j) Van-Mox: Vanguard Laboratories;  
(k) Wymox: Wyeth Laboratories;

(2) Amoxicillin Trihydrate 500 mg. Capsule Form:

(a) Amoxcill: H. L. Moore Drug Exchange;  
(b) Amoxcillin Trihydrate: Biocraft Laboratories, Federal/Premo, Murray Drug Corporation, Parke-Davis and Company, Parmed Pharmaceuticals, Richie Pharmacal Company, Three P Products Corporation;

(c) Amoxil: Beechum Laboratories;  
(d) Larotid: Roche Laboratories;  
(e) Polymox: Bristol Laboratories;  
(f) Robamox: A. H. Robins Company;  
(g) Sumox: Reid-Provident;  
(h) Theda-Mox: Theda Corporation;  
(i) Trimox: E. R. Squibb and Sons;  
(j) Van-Mox: Vanguard Laboratories;  
(k) Wymox: Wyeth Laboratories.

Section 2. Amoxicillin Trihydrate Suspension Pharmaceutical Products. The following Amoxicillin Trihydrate suspension pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Amoxicillin Trihydrate 125 mg/5 ml Suspension Form:

(a) Amoxcill: H. L. Moore Drug Exchange;  
(b) Amoxicillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Parke-Davis and Company, Parmed Pharmaceuticals, Richie Pharmacal Company, Three P Products Company;

(c) Amoxil: Beechum Laboratories;  
(d) Larotid: Roche Laboratories;  
(e) Polymox: Bristol Laboratories;  
(f) Robamox: A. H. Robins Company;  
(g) Sumox: Reid-Provident;  
(h) Theda-Mox: Theda Corporation;  
(i) Trimox: E. R. Squibb and Sons;  
(j) Van-Mox: Vanguard Laboratories;  
(k) Wymox: Wyeth Laboratories.

(2) Amoxicillin Trihydrate 250 mg/5 ml Suspension Form:

(a) Amoxcill: H. L. Moore Drug Exchange;  
(b) Amoxicillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Parke-Davis and Company, Parm-

ed Pharmaceuticals, Richie Pharmacal Company, Three P Products Corporation;

(c) Amoxil: Beechum Laboratories;  
(d) Larotid: Roche Laboratories;  
(e) Polymox: Bristol Laboratories;  
(f) Robamox: A. H. Robins Company;  
(g) Sumox: Reid-Provident;  
(h) Theda-Mox: Theda Corporation;  
(i) Trimox: E. R. Squibb and Sons;  
(j) Van-Mox: Vanguard Laboratories;  
(k) Wymox: Wyeth Laboratories.

Section 3. Amoxicillin Trihydrate Pediatric Drops Pharmaceutical Products. The following amoxicillin trihydrate pediatric drops pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Amoxicillin Trihydrate 50/mg/ml Pediatric Drops:

(1) Amoxil: Beechum Laboratories;  
(2) Larotid: Roche Laboratories.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED:

J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

##### 902 KAR 1:035. Chlorpheniramine maleate.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Chlorpheniramine Maleate pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Chlorpheniramine Maleate Tablet Pharmaceutical Products. The following chlorpheniramine maleate tablet pharmaceutical products are determined to be therapeutically equivalent: Chlorpheniramine Maleate 4 mg. Tablet Form:

(1) Chlorpheniramine Maleate: Bell Pharmacal, Bolar Pharmaceuticals, Columbia Medical Company, Cooper Drug Company, Danbury Pharmacal, Geneva Generics, H. L. Moore Drug Exchange, ICN Pharmaceuticals, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Pace-Bond Drug Company, Paramount Surgical Supply Corporation, Parmed Pharmaceuticals, Pharnecon Inc., Philips-Roxane Laboratories, Purepac Pharmaceuticals, Richie Laboratories, Rugby Laboratories, Steri-Med Inc., Theda

Corporation, Tutag Pharmaceuticals, United Research Laboratories, Zenith Laboratories;  
 (2) Chlorophen: Vanguard Laboratories;  
 (3) Chlor-Trimeton: Schering Corporation.  
 (4) Panahist: PanRay Division, Ormont Drug and Chemical Co., Inc.

Section 2. Chlorpheniramine Maleate Syrup Pharmaceutical Products. The following chlorpheniramine maleate syrup pharmaceutical products are determined to be therapeutically equivalent: Chlorpheniramine Maleate 2 mg/5 ml Syrup Form:

- (1) Chloridamine Syrup: National Pharmaceutical;
- (2) Chlorophen: Vanguard Laboratories;
- (3) Chlorpheniramine Maleate: Bay Laboratories.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary  
 RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
 TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

##### 902 KAR 1:045. Doxycycline [Capsule].

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
 PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Doxycycline pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Doxycycline *Hyclate* Capsule Pharmaceutical Products. The following doxycycline *hyclate* capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Doxycycline *Hyclate* 50 mg. Capsule Form:
  - (a) Doxy II: USV Pharmaceutical Company;
  - (b) Doxychel: Rachelle Laboratories, Incorporated;
  - (c) Doxycycline *Hyclate*: Interstate Drug Exchange, Murray Drug Corporation, Parmed Pharmaceutical, Purepac Pharmaceuticals, Richie Pharmacal;
  - (d) Vibramycin: Pfizer, Incorporated.
- (2) Doxycycline *Hyclate* 100 mg. Capsule Form:
  - (a) Doxy II: USV Pharmaceutical Company;
  - (b) Doxychel: Rachelle Laboratories;
  - (c) Doxycycline *Hyclate*: Danbury Pharmacal, Generix Drug Corporation, Interstate Drug Exchange, Murray Drug Corporation, Purepac Pharmaceuticals, Richie Pharmacal, Theda Corporation;
  - (d) Vibramycin: Pfizer, Incorporated.

Section 2. Doxycycline *Monohydrate* for Oral Suspension [Elixir] Pharmaceutical Products. The following Doxycycline *Monohydrate* for Oral Suspension [Elixir] pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Doxycycline 25 mg/5ml *Monohydrate* for Oral Suspension [Elixir]:

- (1) Doxy II: USV Pharmaceutical Company;
- (2) Doxychel: Rachelle Laboratories, Incorporated;
- (3) Vibramycin: Pfizer, Incorporated.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
 TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

##### 902 KAR 1:057. Potassium chloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
 PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Potassium Chloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Potassium Chloride Oral Liquid Pharmaceutical Products. The following Potassium Chloride oral liquid pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Potassium Chloride 10% Oral Liquid, with sugar:
  - (a) K-Ten: Pharmacist's Choice;
  - (b) Potassium Chloride: Barre Drug Company, Cooper Drug Company, Richie Pharmacal Company, Spencer-Mead, Inc., Theda Corporation.
- (2) Potassium Chloride 10% Oral Liquid, without sugar:
  - (a) Kaochlor SF 10%: Warren-Teed Laboratories;
  - (b) Potassium Chloride: Barre Drug Company, Cooper Drug Company, Geneva Generics, Lederle Laboratories, Murray Drug Company, Parmed Pharmaceuticals, Philips-Roxane Laboratories, Purepac Pharmaceuticals, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products Corporation.
- (3) Potassium Chloride 20% Oral Liquid, without sugar:
  - (a) Kaon CL 20%: Warren-Teed Laboratories;
  - (b) Potassium Chloride: Barre Drug Company, Cooper Drug Company, Lederle Laboratories, Murray Drug Company, Philips-Roxane Laboratories, Purepac Phar-

maceuticals, Theda Corporation, Three P Products Corporation.

(4) *Potassium Chloride 20MEq. per 4gm. Packet:*

(a) *Kay Ciel: Cooper Laboratories;*

(b) *Potassium Chloride: Philips-Roxane Laboratories.*

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES  
Kentucky Drug Formulary Council  
(Proposed Amendment)**

**902 KAR 1:141. Sulfisoxazole and Phenazopyridine  
[Hydrochloride Tablet].**

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Sulfisoxazole and Phenazopyridine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Sulfisoxazole and Phenazopyridine Hydrochloride Tablet Pharmaceutical Products. The following Sulfisoxazole and Phenazopyridine Hydrochloride tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Sulfisoxazole 500 mg. and Phenazopyridine Hydrochloride 50 mg. Tablet Form:

(1) Azo Gantrisin: Roche Laboratories;

(2) Azo Sulfisoxazole: *Generix Drug Corporation, Murray Drug Corporation, Parmed Pharmaceuticals, Pharnecon, Inc., Richlyn Laboratories, Rugby Laboratories* (Therapeutic equivalence is determined for *Generix Drug Corporation, Murray Corporation, Parmed Pharmaceuticals, and Rugby Laboratories* only if manufactured by Richlyn Laboratories.);

(3) Azo-V-Sul: Vanguard Laboratories;

(4) Sulfisoxazole and Phenazopyridine: Philips-Roxane Laboratories, Richie Pharmacal Company.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES  
Kentucky Drug Formulary Council  
(Proposed Amendment)**

**902 KAR 1:324. Hyoscyamine sulfates.**

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)  
PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Hyoscyamine Sulfate, Atropine Sulfate, Hyoscine Hydrobromide and Phenobarbital pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Hyoscyamine Sulfate, Atropine Sulfate, Hyoscine Hydrobromide and Phenobarbital Tablet Pharmaceutical Products. The following Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg., and Phenobarbital 16.2 mg. tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg. and Phenobarbital 16.2 mg. Tablet Form:

(1) *Antispasmodic Tablets: Purepac Pharmaceuticals;*

(2) [(1)] *Barbidonna: Mallinckrodt;*

(3) [(2)] *Belladonna Alkaloids with Phenobarbital: Philips-Roxane Laboratories, Trust Pharmaceuticals;*

(4) [(3)] *Donnatal: A. H. Robins Company;*

(5) [(4)] *Don-A-Spas: Richie Pharmacal;*

(6) *Haponal: United Research Laboratories;*

(7) [(5)] *Relaxadon: Geneva Generics;*

(8) [(6)] *Sedacord: Cooper Drug Company;*

(9) [(7)] *Sedopar: Parmed Pharmaceuticals;*

(10) [(8)] *Setanine: Tutag Pharmaceuticals;*

(11) [(9)] *Spalix: Reid-Provident Laboratories;*

(12) [(10)] *Spaslin: Blaine Company, Inc.,*

(13) [(11)] *Spasmolin: Danbury Pharmacal, Murray Drug Corporation;*

(14) [(12)] *Theda Spas: Theda Corporation;*

(15) [(13)] *Vanatal: Vanguard Laboratories.*

Section 2. Hyoscyamine Sulfate, Atropine Sulfate, Hyoscine Hydrobromide and Phenobarbital Capsule Pharmaceutical Products. The following Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg., and Phenobarbital 16.2 mg. capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg., and Phenobarbital 16.2 mg. Capsule Form:

(1) *Donnatal: A. H. Robins Company;*

(2) *Vanatal: Vanguard Laboratories.*

Section 3. Hyoscyamine Sulfate, Atropine Sulfate, Hyoscine Hydrobromide and Phenobarbital Elixir Pharmaceutical Products. The following Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg., and Phenobarbital 16.2 mg. elixir pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

Hyoscyamine Sulfate 0.1037 mg., Atropine Sulfate 0.0194 mg., Hyoscine Hydrobromide 0.0065 mg., and Phenobarbital 16.2 mg. Elixir Form:

- (1) Antispasmodic Elixir: Generix Drug Corporation, Henry Schein, Inc., *Purepac Pharmaceuticals*, Spencer-Mead, Inc., Three P Products;
- (2) Barophen Elixir: Barre Drug Company, Murray Drug Corporation;
- (3) Bay-Ase Elixir: Bay Laboratories;
- (4) Belladonna Alkaloids with Phenobarbital: Philips-Roxane Laboratories, *Trust Pharmaceuticals*;
- (5) Donna-Phenal Elixir: Columbia Medical Company;
- (6) Don-A-Spas Elixir: Richie Pharmacal Company;
- (7) Donnamor Elixir: H. L. Moore Drug Exchange;
- (8) Donnatal Elixir: A. H. Robins Company;
- (9) Hyoscyamine Sulfate, Atropine Sulfate, Hyoscine Hydrobromide and Phenobarbital: Cooper Drug Company;
- (10) Hyosphen Elixir: Rugby Laboratories;
- (11) Sedapar Elixir: Parmed Pharmaceuticals;
- (12) Theda Spas Elixir: Theda Corporation;
- (13) Vanatal Elixir: Vanguard Laboratories.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary  
Council, 275 East Main Street, Frankfort, Kentucky  
40621.

**DEPARTMENT FOR HUMAN RESOURCES**  
**Bureau for Health Services**  
**Certificate of Need and Licensure Board**  
**(Proposed Amendment)**

**902 KAR 20:115. Emergency care; ambulance services.**

RELATES TO: KRS 216.405 to 216.485, 216.990(2)

PURSUANT TO: KRS 13.082, 216.425

NECESSITY AND FUNCTION: This regulation, which relates to the operations and services of Emergency Care; Ambulance Services, is being promulgated pursuant to the mandate of KRS 216.425(3) that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services.

**Section 1. Definition and Essential Characteristics:** Emergency care ambulance service means health care and transportation provided by any individual or private or public organization having a vehicle or vehicles that are specially designed, constructed or that have been modified or equipped with the intent of using the same, or maintaining or operating the same for the health care and transportation of persons who are sick, injured, or otherwise incapacitated.

**Section 2. Licensure:** No person shall provide emergency care ambulance services without having first obtained a license from the board. Licenses issued by the board shall include designation thereon of "conforming" or "non-

conforming" with the standards set forth in this regulation.

(1) Existing services: An "existing service" is defined as an emergency care ambulance service in operation prior to January 1, 1973 and continuously thereafter.

(a) Upon submission of a properly completed application to the board, accompanied by the prescribed fee, an existing service in full compliance with the standards herein may be issued a license designated as "conforming." Any existing service not in full compliance, upon submission of properly completed application accompanied by the prescribed fee, may be issued a license designated as "non-conforming." Those standards which are not met by the non-conforming service shall be identified and reported to the Regional Health Planning Council and responsible state and local officials. An existing licensed non-conforming service may be redesignated as a conforming service upon full compliance with the standards herein.

(b) Licenses issued to existing services designated as "non-conforming" shall not be subject to renewal when adequate services conforming to standards have been developed and are available to serve the community or area in which the non-conforming service is operating. Delineation of such community or area shall be consistent with regional emergency medical services plans developed and adopted by the regional and state comprehensive health planning councils.

(2) Newly developed services: A "newly developed service" is defined as an emergency care ambulance service beginning operation on or after January 1, 1973.

(a) Upon submission of a properly completed application to the board, accompanied by the prescribed fee, a newly developed service in full compliance with the standards herein may be eligible to receive a license designated as "conforming." A newly developed service not in full compliance with the standards herein may, upon submission of a properly completed application accompanied by the prescribed fee, be eligible to receive a license designated as "non-conforming," provided that reasonable assurances including a plan setting dates for compliance with standards is submitted by the applicant and is accepted by the board. Newly developed services shall not be eligible for licensure when adequate services conforming to the standards herein exist in the area to be served. A newly developed service licensed as "non-conforming" may be redesignated as "conforming" upon full compliance with the standards herein.

(b) Licenses issued to newly developed services designated as "non-conforming" shall not be subject to renewal when adequate services conforming to standards have been developed and are available to serve the community or area in which the non-conforming service is operating. Delineation of such community or area shall be consistent with regional emergency medical services plans developed and adopted by the regional and state comprehensive health planning councils.

**Section 3. Standards for the Operation of Ambulance Services:** To be issued a license designated as "conforming," the ambulance service shall comply with the following standards: (1) Vehicle design and maintenance:

(a) On and after January 1, 1976 all vehicles used in the provision of ambulance services shall be designed to provide adequately for the care and transportation of patients and shall conform to the following patient compartment minimum dimensions: width twenty-five (25) inches of unobstructed floor space between stretcher and squad bench for the technician to perform cardiopulmonary

resuscitation on the primary patient when the technician is in a right angle, kneeling position to the side of the patient; 116 inches (twenty-five (25) inches at the head plus fifteen (15) inches at the foot of a seventy-six (76) inch litter); height, fifty-four (54) inches from floor to ceiling; provided however, that for some of the vehicles in use by the applicant reasonable variation in dimensions may be allowed where such vehicles are to be utilized only for designated limited purposes which are specified by the applicant and approved by the board. Effective January 1, 1980, all conforming vehicles utilized (except limited purpose units) shall comply fully with vehicle design criteria contained in GSA Federal Specifications KKK-A-1822, dated January 2, 1974.

(b) All vehicles shall be kept in optimum working order. The interior of the vehicle and equipment shall be cleaned after each use, unless precluded by emergency conditions.

(2) Personnel:

(a) Ambulance services shall provide emergency service on a twenty-four (24) hour basis. This provision may be met through an adequate call system.

(b) Each emergency ambulance service shall be staffed to provide at least one (1) driver and one (1) attendant for each run. The attendant shall remain with the patient at all times during transport.

(c) Each employee shall receive pre-employment and annual physical examinations which shall include at least a chest x-ray (or recommended tuberculin testing procedure).

(d) All attendants utilized in the provision of ambulance services shall be trained to at least minimal level. Until such time as EMT-A training becomes mandatory, the following are acceptable: Red Cross Advanced, Red Cross Standard First Aid and Personal Safety, either to be supplemented by ten (10) hours Cardio-Pulmonary Resuscitation; Red Cross Advanced First Aid and Emergency Care Certification with ten (10) hours supplemental CPR instruction, EMT-A certification, and Medical Corpsman Training within the last five (5) years supersede the above listed programs. Certification must be current.

(e) Effective January 1, 1976, each attendant shall be certified as an EMT-A by the Department for Human Resources. All additional personnel utilized in the provision of EMS Transportation shall be trained to the minimal levels specified in paragraph (d) above. New personnel added after January 1, 1976, shall receive the minimal training within six (6) months from date of initial utilization.

(3) Equipment: All vehicles used in the provision of ambulance services shall have at least the following essential equipment or such equipment as is prescribed by the board, viz:

- (a) Suction apparatus (fixed or portable);
- (b) Hand operated bag-mask ventilation unit with adult, child, and infant size masks (capable of use with oxygen);
- (c) Oropharyngeal airways in adult, child, and infant sizes;
- (d) Oxygen equipment (fixed or portable);
  - 1. Pressure gauge and flow rate regulator;
  - 2. Adaptor and tubing;
  - 3. Transparent masks in adult, child, and infant sizes; and
  - 4. Filled spare cylinder.
- (e) Mouth gags (commercial or made from tongue blades);
- (f) Universal dressing approximately ten (10) inches by thirty-six (36) inches, compactly folded and packaged;

(g) Sterile gauze pads, four (4) inches by four (4) inches;

(h) Soft roller self-adhering bandages, various sizes;

(i) Roll of aluminum foil, sterilized and wrapped;

(j) Adhesive tape, various size rolls;

(k) Two (2) sterile burn sheets;

(l) Hinged half-ring lower extremity traction splint, length forty-three (43) inches or substitute padded board splints four and one-half feet by three inches (4½' x 3");

(m) Inflatable air splints for arm, leg and foot as minimum or a suitable substitute (i.e., padded boards, etc.);

(n) Short and long spine boards with accessories (orthopedic "scoop" stretcher preferred over long spine board);

(o) Triangular bandages;

(p) Large safety pins;

(q) Shears for bandages;

(r) Sterile obstetrical kit; and

(s) Sphygmomanometer and stethoscope.

(t) Additionally, the following medical items are to be considered mandatory on-board equipment as of January 1, 1980:

1. Mouth-to-mouth artificial ventilation airways for adults and children;

2. Sterile IV agents with administration kits to be used by qualified personnel;

3. Two (2) or more padded board splints four and one-half (4½) feet long by three (3) inches wide;

4. Poison kit. (4) [Also] *Extrication equipment*: Effective January 1, 1980, all conforming vehicles shall carry the full contingent of access and extrication equipment for ambulance use as stipulated in the Highway Safety Program Manual No. 11, date April 1974[.] *except for, those ambulance services which have written agreements with rescue squads, fire departments or any emergency service agency that meets the requirements of the Highway Safety Program manual, for extrication service.*

(5) [(4)] Radio communications equipment: All ambulance services shall be equipped with two (2) way radio communications equipment compatible with the statewide ambulance-to-hospital emergency radio communications system. This requirement becomes effective upon implementation of the regional communications network for the region in which a particular ambulance service is located.

(6) [(5)] Records: All ambulance services shall keep adequate records, and shall utilize forms which may subsequently be specified by the board. Records shall be maintained at the ambulance base headquarters, and shall be available for periodic review as deemed necessary by the board. Records shall include at least the following information:

- (a) Name of patient;
- (b) Date of run;
- (c) Time and odometer readings;
- (d) Vehicle license or unit number;
- (e) Name of driver and attendant;
- (f) Destination;
- (g) Nature of call (illness, injury, etc.);
- (h) Victim status (conscious, convulsing, hemorrhaging, etc.);
- (i) Cause of injury (motor vehicle accident, gunshot wound, etc.);
- (j) Case severity;
- (k) Vital signs (blood pressure, pulse, respiration);
- (l) Response to external stimuli (patient does not react to pin prick, pupils do not react to light, etc.);



- (m) Aid given to patient;
- (n) Employee records, including a resume of each employee's training and experience, shall be maintained; and
- (o) Health records of all drivers and attendants including evidence of pre-employment and annual physical examination, chest x-ray (or recommended tuberculin testing procedure) and records of all illnesses or accidents occurring on duty.

[Section 4. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.]

MASON C. RUDD, Chairman

ADOPTED: November 14, 1979

RECEIVED BY LRC: December 4, 1979 at 1:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Mason C. Rudd, Chairman, Kentucky Health  
Facilities and Health Services, Certificate of Need and  
Licensure Board, 275 East Main Street, Frankfort, Ken-  
tucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES**  
**Bureau for Health Services**  
**Division for Consumer Health Protection**  
**(Proposed Amendment)**

**902 KAR 45:005. Definitions.**

RELATES TO: KRS 219.011 to 219.081, 219.991(1)

PURSUANT TO: KRS 13.082, 194.50, 211.090

NECESSITY AND FUNCTION: KRS 219.011 to 219.081 and 219.991(1), the Kentucky Hotel and Food Service Establishment Act, authorizes the Department for Human Resources to regulate food service establishments in Kentucky. KRS 219.041(2) directs the department to adopt a State Food Service Code. The function of this regulation is to establish a uniform State Food Service Code for the regulation of all food service establishments within the Commonwealth of Kentucky for the purpose of protecting the public health.

Section 1. Citation of Regulation. This regulation may be cited as "State Food Service Code."

Section 2. Definitions. As used in this regulation: (1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the department based on determination as to conformance with appropriate standards and good public health practices.

(3) "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances

added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(5) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) "Department" means the Department for Human Resources and includes the local health department having jurisdiction and their duly designated representatives.

(7) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(8) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(9) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, checkout counters, vehicles and similar items.

(10) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(11) "Kitchenware" means all multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(13) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(14) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(15) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(16) "Perishable food" means food of such type or in such conditions or physical state that it may spoil or otherwise become unfit for human consumption.

(17) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2), (3), (4), (5), and (9) and any other toxic substance or compound designated by the department.

(18) "Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs or egg products, meat or meat products, poultry or poultry products, fish or fish products, shellfish (oysters, clams, mussels and edible crustacea) or shellfish products, cooked rice, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-

organisms. This term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity value of eighty-five (85) percent or less, nor does it include hard-boiled, peeled eggs, commercially prepared, packaged and properly labeled.

(19) "Pushcart" means a non-self-propelled vehicle limited to serving non-potentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(20) "Reconstituted" means dehydrated food products combined with water or other liquids.

(21) "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero (0) degrees Fahrenheit, or less.

(22) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(23) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(24) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(25) "Tableware" means all multi-use eating and drinking utensils.

(26) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days.

(27) "Utensil" means any implement used in the preparation, storage, transportation or service of food.

(28) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 3. [2.] Applicability. The requirements of this regulation are applicable to all food service establishments, as defined by KRS 219.011(3) located within the Commonwealth of Kentucky.

Section 4. [3.] Application for Permit to Operate a Food Service Establishment. Any person desiring to operate a food service establishment shall make written application for a permit on forms provided by the department. Such application shall include the name and address of the applicant, the location and type of the proposed food service establishment, and the signature of the applicant. If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation. Prior to approval of an application for permit, the department shall inspect the proposed food service establishment to determine compliance with the provisions of this regulation. The department shall issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this regulation.

Section 5. [4.] Food supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption.

Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid [All] milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation [comply with applicable department regulations relating thereto]. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish [used or served], fresh or frozen shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams and edible crustacea) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable department regulations relating thereto.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; [...] except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 6. [5.] Food Protection. (1) Food shall be protected [At all times, including] while being stored, prepared, displayed, served, or transported [, food shall be protected] from potential contamination [from all agents,] including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. 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 periods of preparation and service. Shell eggs shall be stored at sixty (60) degrees Fahrenheit or below.

(2) In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the department. Upon receiving notice of this occurrence, the department shall take whatever action that it deems appropriate to protect the public health.

Section 7. [6.] Food Storage. (1) [Stored] Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored [enclosed] in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat



may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor [on clean surfaces] in a manner [way] that [permits cleaning the storage area and that] protects the food from [contamination by] splash and other contamination, [means;] and that permits easy cleaning of the storage area, except that: [provided, that food in non-absorbent containers may be stored on the floor when it is maintained in an acceptable sanitary condition.]

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or non-potable water lines, except for automatic fire protection sprinkler heads required by law. Food shall not be stored in toilet room or toilet room vestibule.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. *Wrapped sandwiches shall not be stored in direct contact with ice or water.*

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of *potentially hazardous food* at the required temperature[s] of *forty-five (45) degrees Fahrenheit or below* during storage. Each *mechanically refrigerated [cold food storage] facility storing potentially hazardous foods* shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. *Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers. Cold potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.*

(8) The temperature of *potentially hazardous foods* requiring refrigeration shall be *forty-five (45) degrees Fahrenheit or below* except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero (0) degrees Fahrenheit or below.

(10) [Stored] Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils[,], except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of

*potentially hazardous food* at the required temperature of *140 degrees Fahrenheit or above* during storage. Each hot food [storage] facility storing *potentially hazardous foods* shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. *Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.*

(12) The internal temperature of *potentially hazardous foods* requiring hot storage shall be *140 degrees Fahrenheit or above* [more] except during necessary periods of preparation and such *hot potentially hazardous foods* to be transported shall be held at an internal temperature of *140 degrees Fahrenheit* at all times during transportation.

Section 8. [7.] Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized[. Methods and procedures used shall] to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

(3) *Potentially hazardous foods* requiring cooking shall be cooked to heat all parts of the food to a temperature of at least *140 degrees Fahrenheit* except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least *165 degrees Fahrenheit* with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least *150 degrees Fahrenheit*.

(4) Reconstituted[, dry milk[, and dry[-]milk products may be used in instant desserts and whipped products, or for cooking and baking purposes. [, dry eggs and dry egg products shall be used only if heated to 140 degrees Fahrenheit or above.]

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) [(5)] *Potentially hazardous foods* that were cooked and then refrigerated shall be reheated rapidly to *165 degrees Fahrenheit* or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of *potentially hazardous foods*.

(7) Non-dairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to *forty-five (45) degrees Fahrenheit* or below.

(8) [(6)] Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all *potentially hazardous foods*.

(9) [(7)] *Potentially hazardous foods* shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed *forty-five (45) degrees Fahrenheit*; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 9. [8.] Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food on display shall be protected from consumer contamination by the use of easily cleanable counter-protector devices, display cases and similar equipment in addition to other means of protection.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. *Beverage cups and glasses are exempt from this requirement. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.*

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. *When a bulk dispenser for milk or milk products is not available and portions of less than one-half (½) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (½) gallon capacity.*

(8) Cream, half and half, or non-dairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service.

(9) [(8)] Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 10. [9.] Food Transportation. During transportation, food and food utensils shall be in covered con-

tainers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this regulation relating to protection and storage of food.

Section 11. [10.] Employee Health. No person, 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 afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 39 [38] of this regulation.

Section 12. [11.] Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

Section 13. [12.] Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) *Hairnets, hats, scarfs, or similar hair coverings shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.* [Employees shall use effective hair restraints where necessary to prevent the contamination of food or food contact surfaces.]

Section 14. [13.] Employee Practices. (1) Employees shall consume food only in designated dining areas. An area shall not be designated as a dining area if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment or utensil-washing or food preparation areas. Employees shall use tobacco in any form only in designated areas. An area shall not be designated for that purpose if the use of tobacco there might result in contamination of food, equipment, utensils, or other items needing protection.

(3) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(4) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(5) Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 15. [14.] Equipment and Utensils Materials. (1) Multi-use equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet[s] the general requirements set forth in subsec-

tion (1) of this section may be used for cutting blocks, cutting boards, *salad bowls*, and bakers' tables. The use of wood as a food-contact surface under other circumstances is prohibited, *except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.*

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) *Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.* [The repeated use of mollusk or crustacea shells as food containers is prohibited.]

Section 16. [15.] Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, *except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.*

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or

which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

#### Section 17. [16.] Equipment Installation and Location.

(1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, non-potable water lines, stairwells or other sources of contamination. *This prohibition does not apply to automatic fire protection sprinkler heads.*

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is [not] portable within the meaning of subsection (2) of this section *if [unless]:*

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor-mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food contact surfaces are non-toxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 18. [17.] Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of

potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule approved by the department. This schedule shall be based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities *and door seals* of microwave ovens shall be cleaned at least once a day, *except that this shall not apply to hot oil cooking and filtering devices and systems.* [and] Food contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Non-food contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food contact surfaces shall be clean, dry, and used for no other purpose. *Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.* Moist cloths, or sponges, used for cleaning [wiping] non-food-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent [that is kept clean and then shall be rinsed free of detergent and abrasives.] solution *in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a) 1. to 4.*

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half ( $\frac{1}{2}$ ) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a) 4. of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, *they shall not have concentrations higher than the maximum permitted and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.*

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; provided, that existing establishments not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the department. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. [A two (2) compartment sink will be acceptable where only single service tableware is used.] Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type dishwashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash

water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a dishwashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces [services] are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All dishwashing machines shall be thoroughly cleaned *at least once a day or more often when necessary to maintain them in a satisfactory operating condition* [following use].

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 [140] degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; provided, that existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the department. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack [tank], dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.
2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:

1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):

1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 19. [18.] Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be

handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored *at least six (6) inches* above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. *This requirement does not apply to automatic fire protection sprinkler heads.*

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored *at least six (6) inches* above the floor [on clean shelves and] in closed cartons or containers *which* [that] protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. *Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.*

(b) Single-service articles shall be used only once.

Section 20. [19.] Sanitary Facilities and Controls. (1) *The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for a food service establishment shall be developed and approved in accordance with applicable requirements of the Department for Natural Resources and Environmental Protection; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and the private supply shall be discontinued. [Enough potable water for the needs of the food service establishment shall be provided from an approved source and be of safe, sanitary quality.] Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed. Steam used in contact with food or food contact surfaces shall be free from unapproved materials or additives.*

(2) *Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.*

(3) *All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems*



*shall be constructed of approved materials and operated in accordance with applicable laws and regulations.*

Section 21. [20.] Sewage. All sewage, [and] *including liquid waste [matter]*, shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the Department for Natural Resources and Environmental Protection *and the Department of Housing, Buildings and Construction*; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only non-water carried disposal methods which have been approved by the department for temporary use shall be used and operation of such facilities shall be in conformance with applicable state laws and regulations.

Section 22. [21.] Plumbing. (1) All plumbing shall be sized, installed, and maintained in accordance with the State Plumbing Code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed according to applicable state laws and regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) *Except for properly trapped open sinks*, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 23. [22.] Toilet Facilities. (1) In existing food service establishments, *adequate* [separate] toilet facilities shall be provided [for both sexes when employed] and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees; provided, however, that carry out type food service operations shall be exempted from providing toilet facilities for the use of patrons *and provided further that food service establishments located within malls, shopping centers, or similar facilities shall not be required to provide toilet facilities for patrons if such facilities are available within the mall or shopping center.*

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be *solid*, tight-fitting, and self-closing, and shall be closed except during cleaning or maintenance. *Doors may be louvered if installed in accordance to the State Fire Marshal's regulations.*

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 24. [23.] Lavatory Facilities. (1) Lavatories shall be installed in accordance with the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall [also] be conveniently located within the food preparation area *and dishwashing area*. Sinks used for food preparation or for washing equipment or utensils *shall* [should] not be used for handwashing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 25. [24.] Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leakproof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. *In new establishments*, suitable facilities, including hot water and detergent, shall be provided and used for washing containers. [Liquid waste from compacting or cleaning operations shall be disposed of as sewage.]

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. *Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.*

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of non-absorbent

material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with applicable regulations of the Department for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

Section 26. [25.] Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or [of] feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 27. [26.] Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in equipment-washing and utensil-washing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of *nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.*

(7) *In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one thirty-second (1/32) of an inch.*

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and

utensil-washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and utensil-washing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the department.

(11) Studs, joists, and rafters shall not be exposed in *walk-in refrigerators, food preparation areas, equipment and utensil washing areas and in toilet rooms* except by special plan approval by the department.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and utensil washing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 28. [27.] Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or *curbed cleaning facilities* shall be provided.

Section 29. [28.] Lighting. (1) At least *thirty (30) [fifty (50)]* foot-candles of *natural or artificial* light shall be provided to all working surfaces and [at least thirty (30) foot-candles of light shall be provided] to all other surfaces and equipment in food preparation, utensil washing, and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all *walk-in refrigerators, food storage areas and dining and entry [other] areas*, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and *facilities where utensils and equipment are cleaned and stored* [; provided, that this requirement shall not apply to heat lamps]. *Shatter-proof bulbs may be approved by the department without further shielding. Heat lamps shall be protected by a shield sur-*

*rounding and extending beyond the bulb, leaving only the face of the bulb exposed.*

Section 30. [29.] Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 31. [30.] Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for utensil-washing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 32. [31.] Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in food service establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled for easy identification of contents.

(3) Poisonous or toxic materials *consist of the following three (3) categories:*

(a) *Pesticides, which include insecticides, rodenticides, herbicides, and fungicides;*

(b) *Detergents, sanitizers, and related cleaning and dry-ing agents; and*

(c) *Caustics, acids, polishes and other chemicals.*

*Each of these three (3) categories shall be stored and located to be physically separated from each other. All poisonous and toxic materials shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose. To preclude potential contamination, poisonous or toxic materials shall not be stored above or with food, food equipment, utensils, or single service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations. [or in a place other than an area where food is stored, prepared, displayed, or served and other than an area where clean equipment or utensils are stored. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of a room as are insecticides, rodenticides, or other poisonous or toxic materials.]*

(4) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, [n]or in a way that constitutes a hazard to employees [n]or other persons [so stored as to be a potential food adulterant].

(5) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's [their] labeling.

(6) Personal medications shall not be stored in food storage, preparation, or service areas.

(7) First-aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 33. [32.] Premises. (1) Food service establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced[s] with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the food service establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and utensil-washing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind persons shall be permitted in dining areas.

Section 34. [33.] Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The department may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 35 [34] and 36 [35].

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this regulation or beverages that are not



potentially hazardous and are dispensed from protected equipment need not comply with requirements of this regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; *however, frankfurters may be prepared and served from these units or pushcarts.*

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning[,] and sanitization, and handwashing, in accordance with the requirements of this regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least fifty (50) percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 35. [34.] Commissary. Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this regulation;[,] *provided, however, mobile food service units equipped with a potable water supply sytem under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.*

Section 36. [35.] Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the Department for Natural Resources and Environmental Protection *and the Department of Housing, Buildings and Construction*; provided, however, if a public sewerage system subsequently becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 37. [36.] Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this regulation, except as

otherwise provided in this section. The department may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use foodgrade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for handwashing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee handwashing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be pro-

vided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

**Section 38. [37.] Plan Review of Future Construction.** When a food service establishment is hereafter constructed or extensively remodeled, or *plumbing relocated, or additional plumbing added*, or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the department for approval before such work is begun.

**Section 39. [38.] Procedure When Infection is Suspected.** When the department has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The department may require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food service establishments;
- (2) The immediate closing of the food service establishment concerned until, in the opinion of the department, no further danger of disease outbreak exists;
- (3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;
- (4) Adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

**Section 40. [39.] Enforcement Provisions.** (1) Whenever the department has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the department in the performance of its duties, [and] after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing which shall be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this regulation the department shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator may [shall] be notified in writing that the permit shall be suspended at the end of five (5) days following service of such notice, unless a written request for a hearing is filed with the department, by the permit holder, within such five (5) day period.

(3) 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 seven (7) [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 department shall make a reinspection. If the reinspection reveals that the conditions causing

*suspension of the permit have been corrected*, [food service establishment is in compliance with the requirements of this regulation,] the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this regulation, or for interference with the department in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the department. Prior to such action, the department 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 five (5) days following service of such notice, unless a request for a hearing is filed with the department, by the permit holder, within such five (5) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this regulation shall be conducted by the department at a time and place designated by it. Based upon the record of such hearing, the department shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the department shall inspect each food service establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(8) Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(a) 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, but in any event, by the time of the next routine inspection.

(b) 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.

(c) 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 department but in any event, not to exceed ten (10) days.

(d) 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 five (5) days after receipt of such notice unless a written request for a hearing is filed with the department, by the permit holder, within such five (5) day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections shall result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within five (5) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the department.

(g) Whenever a food service establishment is required under the provisions of this regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, *but in no event to exceed seven (7) days.*

**Section 41. [40.] Examination and Detention of Foods.** The department may examine and collect samples of foods as often as necessary for the enforcement of this regulation. The department shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

ROBERT SLATON, Commissioner

ADOPTED: December 14, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 14, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES**  
**Bureau for Health Services**  
**Division for Consumer Health Protection**  
**(Proposed Amendment)**

**902 KAR 45:010. Definitions.**

RELATES TO: KRS 217.005 to 217.215, 217.992 [;217.808 to 217.812, 217.990(8); 219.011 to 219.081, 219.991(1); 221.010 to 221.110, 221.990]

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: The Department for Human Resources is empowered by KRS 217.005, et seq. [; 217.080, et seq.; 219.011, et seq.; and KRS Chapter 221, et seq.] to regulate food. [; food vending machines and food service establishments.] The purpose of this regulation is to define terms applicable to [all] regulations adopted by the

Department for Human Resources relating to food [; food vending machines, frozen food lockers,] and *retail food markets.* [food service establishments.]

**Section 1. Definitions.** The following terms shall have the meanings set forth below in [all] regulations adopted by the Department for Human Resources relating to food [; food vending machines, and food service establishments] and *retail food markets*, unless clearly indicated otherwise.

(1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the department based on determination as to conformance with appropriate standards and good public health practices.

(3) "Artificial color" means any material that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food is capable, alone or through reaction with another substance, of imparting a color thereto.]

(4) "Artificial flavor" means any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.]

(5) [(5)] "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) [(6)] "Closed" means without openings large enough for the entrance of insects. An opening of *one-sixteenth* (1/16) [one-thirty-second (1/32)] inch or less is closed.

(5) [(7)] "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) [(8)] "Department" means the Department for Human Resources and includes the local health department having jurisdiction and their duly designated representatives.

(7) [(9)] "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(8) [(10)] "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(9) [(11)] "Equipment" means stoves, ranges, hoods, ovens, (including micro-wave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, checkout counters, vehicles and similar items.

(10) [(12)] "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(11) [(13)] "Food processing establishment" means a commercial establishment, that is under the inspection of a

regulatory agency, in which food is processed, prepared, packaged or distributed for human consumption.

(12) [(14)] "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

[(15)] "Machine location" means the room, enclosure, space or area where one (1) or more vending machines are installed and operated.]

(13) [(16)] "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

[(17)] "Mobile food unit" means a food service establishment that is designed to be readily movable.]

(14) [(18)] "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(15) [(19)] "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(16) "Person" includes any individual, partnership, corporation, association, or other legal entity.

(17) [(20)] "Perishable food" means food of such type or in such conditions or physical state that it may spoil or otherwise become unfit for human consumption.

(18) [(21)] "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2), (3), (4), (5), and (9) and any other toxic substance or compound designated by the department.

(19) [(22)] "Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs or egg products, meat or meat products, poultry or poultry products, fish or fish products, shellfish (oysters, clams, mussels and edible crustacea) or shellfish products, cooked rice, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity value of eighty-five (85) percent or less, nor does it include hard-boiled, peeled eggs, commercially prepared, packaged and properly labeled.

(20) "Reconstituted" means dehydrated food products combined with water or other liquids.

(21) [(23)] "Retail food market" or "market" means any establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, non-potentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries or food processing establishments.

(22) [(24)] "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five

(45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, *which should be stored at* [it shall mean] zero (0) degrees Fahrenheit, or less.

(23) [(25)] "Sanitization" ["Sanitize"] means effective bactericidal treatment by a process that *provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count*, [destroys microorganisms] including pathogens, *to a safe level on utensils and equipment*. [and which has been approved by the department.]

(24) [(26)] "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) [(27)] "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

[(28)] "Tableware" means all multiuse eating and drinking utensils.]

[(29)] "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days.]

(26) [(30)] "Utensil" means any implement used in the preparation, storage, transportation or service of food.

(27) [(31)] "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

ROBERT SLATION, Commissioner

ADOPTED: December 14, 1979

APPROVED:

J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 14, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

## DEPARTMENT FOR HUMAN RESOURCES

Bureau for Social Insurance

(Proposed Amendment)

### 904 KAR 3:040. Issuance procedures.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth coupon issuance procedures used by the department in the administration of the food stamp program.

Section 1. Basic Issuance Requirements. The department is responsible for the timely and accurate issuance of coupons to eligible households. In issuing coupons the department must insure that:

- (1) Only certified households receive benefits;
- (2) Coupons are accepted, stored, and protected after delivery to receiving points within the state;
- (3) Program benefits are distributed in the correct amounts; and
- (4) Coupon issuance and reconciliation activities are properly conducted in accordance with 7 CFR Parts 274.5 and 274.6 and accurately reported to the Food and Nutrition Service.

Section 2. *Issuance System.* The department shall arrange for the issuance of coupons to eligible households by utilizing *one (1) of the following systems:* [an authorization to participate (ATP) system in which an authorizing document is distributed to the household and surrendered to the coupon issuer when coupons are obtained.]

(1) *An authorization to participate (ATP) system in which an authorizing document is distributed to the household and surrendered to the coupon issuer when coupons are obtained; or*

(2) *A direct coupon mail-out system.*

Section 3. *Production of an ATP Card.* When the ATP system is utilized the department shall issue on a monthly basis an authorization to participate (ATP) card to all eligible households. The ATP card will contain at a minimum: serial number, case name, address, case number, coupon allotment, expiration date, county for which the ATP is issued, and a signature space for the household member or the authorized representative.

(1) The department shall void all ATP's mutilated or otherwise rejected during the preparation process. The voided ATP's shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two (2) persons and the department maintains a list of all destroyed ATP's.

(2) The department shall mail the ATP to the eligible household in such a manner as to prevent mail loss. Households which report two (2) consecutive mail losses must be provided with an alternate means of delivery.

(3) The department shall maintain security and controls for ATP's returned as undeliverable by the postal service in accordance with 7 CFR Part 274.2(e)(6)(ii).

(4) The department shall produce and mail the ATP card within two (2) days of the date the application is filed, if circumstances indicate eligibility for expedited service as outlined in 7 CFR Part 273.2(i).

(5) The department shall issue an emergency replacement ATP only if the original ATP is reported lost or stolen in the period for which it is intended to cover.

(6) The department shall provide the household with the means to designate an emergency authorized representative to obtain the household's allotment with a particular ATP.

Section 4. *Redemption of the Authorization to Participate Card.* When the ATP system is utilized, the department shall provide each eligible household with the means to redeem his ATP card for coupons by over-the-counter issuance or by regular mail issuance.

(1) Prior to being issued coupons the eligible individual must present issuance personnel with proof of identity.

(2) Issuance personnel must examine the ATP card to verify its validity.

(3) The eligible individual must sign the ATP card in the presence of the issuer unless the eligible individual is participating in mail issuance. Persons utilizing mail issuance must sign their ATP card prior to mailing the card to the issuance site.

(4) Coupons are issued in accordance with a table for coupon issuance provided by Food and Nutrition Service.

(5) The department shall provide for the issuance of coupon replacements due to improper manufacture or mutilation.

(a) The department shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(b) If the department can determine the value of the improperly manufactured or mutilated coupons, the unusable coupons shall be replaced on a dollar-for-dollar exchange. After the exchange, the department shall destroy the coupons in accordance with 7 CFR Part 274.8(b).

(c) If the department cannot determine the value of the improperly manufactured or mutilated coupons, the unusable coupons shall be cancelled by writing or stamping "cancelled" across the face of the coupons and forwarding the coupons to Food and Nutrition Service.

Section 5. *Verification of ATP Issuance.* When the ATP system is used the department shall verify the number of transmitted ATP's received from the coupon issuers and the total value of authorized issuances. [Coupon Inventory Management. The department shall establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with 7 CFR Parts 274.4(a)1 and 274.4(a)2.]

Section 6. *Direct Coupon Issuance.* When the direct mail system is used the department issues all or part of the coupon allotments through the mail. The department shall mail the coupons directly to the household without using an authorization document. [Coupon Controls. The department shall establish control and security procedures to safeguard coupons similar to those used to protect currency outlined in 7 CFR Part 274.4(b).]

Section 7. *Mail Issuance Controls and Records.* When the direct mail system is used the department shall record the date and amount of coupons issued. [Coupon Requisitioning. The department shall arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment.]

(1) The department must provide for dual accountability during the stuffing and addressing operations and maintain a perpetual coupon inventory control and mail issuance log.

(2) The department shall consult with appropriate postal officials concerning the schedule for mailing coupons, the approximate volume and values of the mailings, the type of envelopes to be used and maintain liaison with postal officials to facilitate prompt, efficient and safe delivery of coupon mailings to households.

(3) The department shall use first class mail in mailing the coupons to households. The coupons shall be mailed in sturdy nonforwarding envelopes.

(4) To minimize mail theft exposure, direct mail issuances shall be staggered through the tenth (10th) day of the month and may be staggered through the fifteenth (15th) day provided that each household will likely receive its coupons on the same date every month. The department shall insure that coupons are not mailed to concentrations of households with the same zip code on the same day.

(5) The department shall insure that participants receive allotments on a timely basis and can receive expedited issuance in accordance with 7 CFR parts 273.2(i) and 274.2(g).

(6) *The department must provide timely replacement issuances.*

Section 8. *Coupons Lost in the Mail. When the direct mail system is used and a household reports the non-receipt of coupons issued through the mail, the department shall:* [Receipt of Coupons. Coupon issuers and bulk storage points shall promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control and storage of coupons.]

(1) *Determine if the coupons were actually mailed;*

(2) *Determine that sufficient time has elapsed for the coupons to have been received by the participant;*

(3) *Review the mail issuance log for the return of undelivered coupons;*

(4) *Report all losses to the postal authorities;*

(5) *Prepare and have the participant sign an affidavit attesting to non-receipt;*

(6) *Issue replacement coupons within five (5) days after the report of non-delivery has been received;*

(7) *Record the report of non-delivery and date of replacement on the mail issuance log;*

(8) *After two (2) consecutive reports of non-delivery from the same household, the department shall employ other issuance methods.*

Section 9. *Coupon Inventory Management. Whether it uses the ATP system or the direct mail system, the department shall establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with 7 CFR parts 274.4(a)1 and 2. [Verification of ATP Issuance. The department shall verify the number of transmitted ATP's received from the coupon issuers and the total value of authorized issuances.]*

Section 10. *Coupon Controls. Whether it uses the ATP or direct mail system, the department shall establish control and security procedures to safeguard coupons similar to those used to protect currency outlined in 7 CFR part 274.4(b). [Availability of Issuance Records. The department shall maintain issuance records for a period of three (3) years from the month of origin.]*

Section 11. *Coupon Requisitioning. Whether it uses the ATP system or the direct mail system, the department shall arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment in accordance with 7 CFR part 274.4(c). [Control of Issuance Documents. The department shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency.]*

Section 12. *Receipt of Coupons. Whether the department uses the ATP system or direct mail system, coupon issuers and bulk storage points shall promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control and storage of coupons pursuant to 7 CFR part 274.5. [Accountable Documents. The department shall provide security and control for all issuance accountability documents.]*

Section 13. *Availability of Issuance Records. Whether it uses the ATP system or direct mail system, the department shall maintain issuance records for a period of three*

*(3) years from the month of origin as outlined in 7 CFR part 274.7.*

Section 14. *Control of Issuance Documents. Whether it uses the ATP system or direct mail system, the department shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency in accordance with 7 CFR part 274.7(b).*

Section 15. *Accountable Documents. Whether it uses the ATP system or direct mail system, the department shall provide security and control for all issuance accountability documents pursuant to 7 CFR part 274.7(c).*

JACK F. WADDELL, Commissioner

ADOPTED: December 10, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 13, 1979 at 1 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Secretary for Human Resources, DHR Building, 275  
East Main Street, Frankfort, Kentucky 40621.



# Proposed Regulations

## DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

### 405 KAR 1:051. Incremental bonding.

RELATES TO: KRS 350.060

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.060 requires the Department for Natural Resources and Environmental Protection to adopt reasonable bonding regulations to cover the cost of reclamation instant to the strip mining of coal. This regulation sets forth procedures and requirements related to the incremental bonding of such permits for surface mining permits.

Section 1. Incremental bonding. (1) A surety satisfactory to the department may be considered, in the discretion of the department, a bond payable in a penal sum to the department to be determined by the department incrementally; provided that any applicant shall, as a permit condition, file with the department pursuant to 405 KAR 1:050 a backfilling and grading plan, a plan for handling waste materials and a revegetation plan sufficient to indicate to the department that the applicant will follow the proposed method of operation and other requirements as set forth by the department.

(2) Bonds issued pursuant to subsection (1) shall be determined by taking into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, and reclamation to be required; provided that the applicant shall identify as part of his plan of operation increments of area of land affected on which he will conduct his operation; and provided further that the applicant shall confine his operations to the identified and bonded increments at all times while operations are conducted on the site.

(3) For purposes of posting the incremental bonds pursuant to subsections (1) and (2), the department shall propose, and the applicant shall agree to, the posting of each additional incremental bond as operations are conducted on each subsequent increment on the site. The department shall publish from time to time procedures and documents to implement this regulation.

(4) The total amount of bond in effect during an operation as set pursuant to this regulation shall at all times be sufficient to reclaim the total disturbed area; provided that the total bond in effect shall be applicable to the total disturbed area and adequate to cover the cost of reclamation of the total disturbed area.

C. FRANK HARSCHER, Secretary

ADOPTED: December 7, 1979

RECEIVED BY LRC: December 7, 1979 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: James R. Villines, Director, Division of Standards and Specifications, Bureau of Surface Mining Reclamation and Enforcement, Room 320, Capital Plaza Tower, Frankfort, Kentucky 40601.

## DEPARTMENT FOR HUMAN RESOURCES Bureau for Administrative Services

### 901 KAR 1:041. Exempt prescription preparations.

RELATES TO: KRS Chapter 218A

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: KRS 218.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the Department for Human Resources, the Department for Human Resources may similarly control the substance under KRS Chapter 218A by regulation. The purpose of this regulation is to delete and exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been deleted and exempted pursuant to federal regulation.

Section 1. Exempt Prescription Stimulant or Depressant Combination Preparations. Any compound, mixture or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1978, edition of the Code of Federal Regulations, Title 21, Food and Drugs, Chapter II—Drug Enforcement Administration, Department of Justice, Part 1308, § 1308.32 Excepted Prescription Drugs, pages 117 to 341, filed herein by reference, are hereby exempted from the provisions of KRS Chapter 218A, the Controlled Substances Act. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of this publication shall be on file in the Office of Inspector General, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection. A copy of this publication is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

WILLIAM T. BURKETT, Inspector General

ADOPTED: November 15, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

## DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council

### 902 KAR 1:331. Dicloxacillin sodium.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or

chemical names that are determined by the Council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Dicloxacillin Sodium pharmaceutical products by their generic and brand names that have been determined by the Council to be therapeutically equivalent.

Section 1. Dicloxacillin Sodium Capsule Pharmaceutical Products. The following Dicloxacillin Sodium capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Dicloxacillin Sodium 250 mg. Capsule Form:
  - (a) Dycill: Beecham Laboratories;
  - (b) Dynapen: Bristol Laboratories;
  - (c) Veracillin: Ayerst Laboratories.
- (2) Dicloxacillin Sodium 500 mg. Capsule Form:
  - (a) Dycill: Beecham Laboratories;
  - (b) Veracillin: Ayerst Laboratories.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council

##### 902 KAR 1:332. Nystatin.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic and chemical names that are determined by the Council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Nystatin pharmaceutical products by their generic and brand names that have been determined by the Council to be therapeutically equivalent.

Section 1. Nystatin Vaginal Tablet Pharmaceutical Products. The following Nystatin vaginal tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Nystatin 100,000 USP Units Vaginal Tablet Form:

- (1) Nycostatin: E. R. Squibb and Sons;
- (2) Nystatin Vaginal Tablet: Federal/Premo, Lederle Laboratories, Parmed Pharmaceuticals, Rugby Laboratories.

E. C. SEELEY, M.D., Chairperson

ADOPTED: November 6, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: November 21, 1979 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dan W. Hanke, Ph.D., Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

##### 902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)

PURSUANT TO: KRS 13.082, 194.050, 211.090, 211.848

NECESSITY AND FUNCTION: KRS 211.848 directs the Secretary of the Department for Human Resources to provide by regulation for a reasonable schedule of fees and charges to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for the renewal thereof and for inspections and environmental surveillance activities conducted by the department. The purpose of this regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This regulation relating to fees applies to all applicants, registrants and licensees of radiation producing machines and radioactive materials, except governmental agencies.

Section 2. Schedule of Annual Fees and Charges. All applications for registration or licensing, or annual renewals thereof, shall be accompanied by the appropriate fee set forth below:

- (1) X-ray systems:
  - (a) 1. Diagnostic-type x-ray systems; therapeutic x-ray systems capable of operating up to 150 kVp; or industrial x-ray systems .....\$15.
  2. For each additional x-ray system at the same address .....\$ 5.
  - (b) Therapeutic x-ray systems capable of operating at 150 kVp or above (including particle accelerator systems) .....\$25.
  - (c) Any other x-ray system not specified above .....\$15.
  - (d) The total registration fees charged for x-ray systems at any institution, facility or office shall not exceed .....\$50.
- (2) Radioactive material licenses:
  - (a) Human use of radioactive, source, or special nuclear material .....\$25.
  - (b) Human use of radioactive material authorized by an in vitro or in vivo registration certificate .....\$10.
  - (c) Industrial radiography; wireline service; nuclear pharmacy (including distribution) .....\$50.
  - (d) Processing, manufacturing or distribution of radioactive, source, or special nuclear material or items containing radioactive, source or special nuclear material .....\$70.
  - (e) Industrial gauging, measuring, level detection, or similar use .....\$20.
  - (f) All other radioactive, source, or special nuclear material licenses not specified above .....\$20.
  - (g) The total licensing fees charged for radioactive material licenses at any institution, facility or office shall not exceed .....\$75.

Section 3. Current Registrants and Licensees. In the event registration or licensing has heretofore been issued by the department prior to the effective date of this regulation and no date of expiration is specified in such registration or licensing certificate, such certificate shall expire on July 1, 1980, and the applicable fee specified in Section 2

shall be due and owing. Thereafter, all such registrations and licenses shall expire one (1) year following the date of issuance.

Section 4. Exemptions. State and local governmental agencies shall be exempt from the payment of fees but shall comply with the other applicable provisions of these regulations.

ROBERT SLATON, Commissioner

ADOPTED: December 14, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 14, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

#### DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

##### 904 KAR 3:060. Administrative fraud hearings.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the department to disqualify food stamp recipients who have committed fraud.

Section 1. Fraud Disqualification. Individuals found through an administrative fraud hearing to have committed fraud shall be ineligible to participate for three (3) months beginning with the periods specified in 7 CFR Part 273.16(b)(8). Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six (6) months and not more than twenty-four (24) months as determined by the court. The disqualification shall apply only to the individual and not to the entire household.

Section 2. Definition of Fraud. The department shall use the criteria outlined in 7 CFR Part 273.16(b) for purposes of determining at an administrative fraud hearing whether or not fraud was committed.

Section 3. Administrative Disqualification. An administrative fraud hearing shall be initiated by the department whenever the department has documented evidence to prove that a currently certified household member has committed fraud and the department believes the household member should be disqualified. Fraud hearings shall not be conducted if the amount the department suspects has been fraudulently obtained is less than thirty-

five dollars (\$35) or if the value of the ineligible items that have been purchased with food stamps is under thirty-five dollars (\$35). The burden of proving fraud is on the department. If the household member is not certified when the suspected fraud is discovered, the department shall initiate the hearing when the household member becomes certified. An administrative fraud hearing shall not be conducted if the local office plans to refer the case for legal action.

Section 4. Fraud Hearing Procedures. The department will provide administrative fraud hearings at the local level in all counties with a right to appeal to a state-level fraud hearing. The conduct of a fraud hearing will be similar to that of a fair hearing. The department will designate hearing officials to conduct only local fraud hearings. Fraud hearing decisions appealed to the state level will be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case; who was not directly involved in the initial determination that the household member had committed fraud; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by state-level personnel. The hearing official(s) shall be an employee of the department. The department shall follow the hearing procedures outlined in 7 CFR Part 273.16(d)(2)(ii), (iii), (iv), (v).

Section 5. Advance Notice of Local Level Hearing. The department shall provide written notice to the household member suspected of fraud at least thirty (30) days in advance of the date a fraud hearing initiated by the agency has been scheduled. The notice shall be mailed certified mail, return receipt requested. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of fraud. If the household member or its representative cannot be located or fails to appear at the hearing without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was committed based on clear and convincing evidence. If the household member is found to have committed fraud but the local hearing officer later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the department shall conduct a new hearing. The household member has ten (10) days from receipt of the notice of the fraud decision to present reasons indicating a good cause for failure to appear. The hearing official must enter the good cause decision into the record. Good cause is defined as:

- (1) The household member was away from home during the entire filing period; or
- (2) The household member is unable to read or to comprehend the notice; or
- (3) The household member moved and a delay resulted in receiving adequate notice; or
- (4) Serious illness of a household member; or
- (5) The delay was no fault of a household member.

Section 6. Participation While Awaiting a Hearing. A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the department cannot disqualify a household member for fraud until the hearing official

finds that the individual has committed fraud, the department shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household as specified in 7 CFR Part 273.16(d)(5).

**Section 7. Fraud Hearing Decision.** The hearing official shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully and with deceitful intent committed fraud. Decisions of the hearing official shall comply with federal policy and shall be based on the hearing record. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the department. This record shall also be available, to the household or its representative at any reasonable time for copying and inspection.

**Section 8. Appeal Rights of the Household.** Household members found to have committed fraud may appeal their decision as specified in 7 CFR Part 273.16(d)(8).

**Section 9. Notification of Fraud Hearing Decisions.** The department shall notify a household member in writing of fraud hearing decisions as specified in 7 CFR Part 273.16(d)(9).

**Section 10. Court Imposed Disqualification.** A court of appropriate jurisdiction, with either the state, a political subdivision of the state, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than six (6) months and not more than twenty-four (24) months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the department to disqualify the individual through an administrative fraud hearing. Fraud disqualifications which are reversed by a court shall be processed as specified in 7 CFR Part 273.16(f).

JACK F. WADDELL, Commissioner

ADOPTED: December 12, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 14, 1979 at 12:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Secretary for Human Resources, DHR Building, 275  
East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES**  
**Bureau for Social Insurance**

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 13.082, 194.050

**NECESSITY AND FUNCTION:** The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of

1977, as amended and 7 CFR Part 270 and 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the fair hearing procedures used by the department to administer the food stamp program.

**Section 1. Availability of Hearings.** The department shall provide a fair hearing to any household aggrieved by any action of the department which affects the participation of the household in the food stamp program. The department shall provide fair hearings at the local level which shall be conducted by state level hearing officers.

**Section 2. Timely Action on Hearing Requests.** The department shall acknowledge all hearing requests, conduct a hearing, and issue a decision within sixty (60) days of a request for a fair hearing. The department shall take action on hearing decisions as specified in 7 CFR Part 273.15(c).

**Section 3. Agency Conference.** The department shall offer an agency conference to households adversely affected by a departmental action. The household shall be advised that an agency conference is optional and will in no way delay or replace the fair hearing process. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal. The agency conference is to be attended by the eligibility worker, his/her supervisor, and the household member and/or representative. An agency conference for households contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household requests that it be scheduled later or states no agency conference is wanted.

**Section 4. Group Hearings.** The department may respond to a series of individual requests for fair hearings by conducting a single group hearing if there is a single common issue in question. Hearing cases may be consolidated only if the sole issue is one of federal law, regulation or policy. In all group hearings the policies governing hearings must be followed. Each individual client shall be permitted to present his own case or be represented by legal counsel or other spokesperson.

**Section 5. Postponement of Hearings.** Households may request and are entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed thirty (30) days from the date of the postponement request and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

**Section 6. Notification of Rights to Request a Hearing.** At the time of application the department shall notify each household of its right to a hearing, of the method by which a hearing may be requested and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the department that it disagrees with the departmental action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall be informed of the availability of that service.

**Section 7. Request for Hearings.** A household or member shall be allowed to request a hearing on any action

by the department or loss of benefits which occurred in the prior ninety (90) days, and, at any time within the current certification period to dispute its current level of benefits. The department shall use the criteria outlined in 7 CFR Part 273.15(h) to define a hearing request.

**Section 8. Departmental Responsibilities on Hearing Request.** The department shall be responsible for complying with the policies and procedures specified in 7 CFR Part 273.15(h)(i) upon receipt of a fair hearing request.

**Section 9. Denial or Dismissal of a Fair Hearing Request.** The department shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in Section 7.

(2) The client or his representative withdraws in writing a request for a hearing at any time prior to the release of the hearing officer's decision.

(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined in 904 KAR 3:060, Section 6.

**Section 10. Continuation of Benefits.** Households which request a fair hearing shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action provided that such household requests a hearing within the period provided on the notice of adverse action and provided its certification period has not expired. The department will follow the procedures specified in 7 CFR Part 273.15(k).

**Section 11. Notification of Time and Place of Hearing.** The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household as specified in 7 CFR Part 273.15(1).

**Section 12. Hearing Official.** The department shall designate a hearing official who meets the criteria specified

in 7 CFR Part 273.15(m)(1) and who has the powers and duties outlined in 7 CFR Part 273.15(m)(2).

**Section 13. Rights During Hearing.** During the hearing process the household shall have the rights specified in 7 CFR Part 273.15(p).

**Section 14. Hearing Decisions.** Decisions of the hearing officer shall comply with federal law and regulation and will be based on the hearing record. The recording of testimony and exhibits, and an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with 7 CFR Part 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection. The departmental policies and procedures regarding hearing decisions shall comply with 7 CFR Part 273.15(g)(2)(3)(i)(5).

**Section 15. Implementation of Hearing Decision.** The department shall insure that the hearing decision is implemented in accordance with 7 CFR Part 273.15(s).

**Section 16. Appeal Board.** Households dissatisfied with the hearing officer's decision may appeal to an appeal board within twenty (20) days from the date of the hearing decision.

**Section 17. Judicial Review.** Households aggrieved by the appeal board's decision shall have the right to appeal this decision to the court of appropriate jurisdiction.

JACK F. WADDELL, Commissioner

ADOPTED: December 10, 1979

APPROVED: J. E. DeSHAZER, Secretary

RECEIVED BY LRC: December 13, 1979 at 1 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Secretary for Human Resources, DHR Building, 275  
East Main Street, Frankfort, Kentucky 40621.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the December 5, 1979 Meeting

(Subject to subcommittee approval at its next meeting on January 2, 1980.)

The Administrative Regulation Review Subcommittee held its regularly scheduled meeting on Wednesday, December 5, 1979 at 10 a.m., in Room 327 of the Capitol. The minutes of the November 7, 1979 meeting were approved. Present were:

**Members:** Representative William T. Brinkley, Chairman, and Representative Albert Robinson.

**Guests:** Del Melcher, Jr., Plumbers Local Union # 107; Allen Dodd, Mechanical Contractors of Kentucky; Marilyn Pierce and Ray Dauenhauer, Jr., Kentucky Association of Plumbing, Heating and Cooling Contractors; John M. Leinenbach, Blue Grass

Chapter—Association of General Contractors; Robert G. Hughes and Doug Oliver, East Kentucky Power Cooperative; Brock R. Landry, Plastic Pipe and Fittings Association; R. F. McGhee, U.S.E.P.A.; C. Frank Harscher III, Hugh N. Archer, Gautam Trivedi, Robert Blanz and Jack Wilson, Department for Natural Resources and Environmental Protection; Robert E. Gable and William H. Gorin, The Stearns Company; Raymond H. Burger, State Plumbing Code Commission; Bill K. Caylor, Kentucky Coal Association; Judith G. Walden and Eugene Perkins, Department of Housing, Buildings and Construction; Ed Fossett, Mickie Hudson and Wendell Cave, Department of Education; Joyce Bell, Edsell Moore, H. Doyle Mills, Margaret Frederick and Charles P. Lawrence, Department for

Human Resources; Tony Sholar, Kentucky Chamber of Commerce; Kenneth L. Anderson, American General Insurance Company; Joseph D. Hudson and Richard S. Smith, Department of Insurance; Carroll Roberts, Board of Hairdressers and Cosmetologists; Ray Hatfield and R. Van Young, Outdoor Advertising Association; Howell Hopson, Citizens League to Protect Surface Rights; Len Mills, Home Builders, General Contractors and Apartment Associations; Dr. Dan W. Hanke, Drug Formulary Council; Stanford H. Lampe, Kentucky Petroleum Council; William Schmidt, Board of Medical Licensure; Edwin Render, Western Kentucky Beauty School; Charles Henry, Department of Transportation; Ramelle F. Patterson, Board of Examiners of Speech Pathology and Audiology; Roy V. Thurman, Division of Occupations and Professions; Constance J. Parrish, Department of Public Information.

**LRC Staff:** Mabel D. Robertson, Deborah Herd, Garnett Evins, Joe Hood and Steve Armbrust.

On motion of Representative Robinson proposed regulation 806 KAR 24:021 was returned to the Department of Insurance for re-evaluation.

The following regulations were deferred until the January 2, 1980 meeting, with the exception of 201 KAR 12:105, which was deferred until the April meeting.

#### **DEPARTMENT OF FINANCE**

##### **Occupations and Professions**

##### **Board of Hairdressers and Cosmetologists**

201 KAR 12:105. School Districts.

#### **DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**

##### **Bureau of Surface Mining**

##### **Reclamation and Enforcement**

##### **Strip Mining of Coal**

405 KAR 1:260. Contemporaneous reclamation.

#### **DEPARTMENT OF TRANSPORTATION**

##### **Bureau of Highways**

##### **Maintenance**

603 KAR 3:020. Advertising devices on federal aid primary system.

#### **DEPARTMENT OF EDUCATION**

##### **Bureau of Instruction**

##### **Elementary and Secondary Education Act**

704 KAR 10:005. Summary hearings.

#### **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.

#### **REGISTRY OF ELECTION FINANCE**

##### **Reports and Forms**

801 KAR 1:007. Committees; definitions and responsibilities.

On motion of Representative Robinson the following regulations were approved and ordered filed.

#### **DEPARTMENT OF FINANCE**

##### **Occupations and Professions**

##### **Board of Medical Licensure**

201 KAR 9:040. License fees.

##### **Board of Examiners of**

##### **Speech Pathology and Audiology**

201 KAR 17:010. Application for licensure.

201 KAR 17:041. Professional code of ethics.

201 KAR 17:050. Audiology aide.

201 KAR 17:060. Speech pathology aide.

#### **DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION**

##### **Bureau of Environmental Protection**

##### **Division of Water Quality**

401 KAR 5:026. Classification of waters.

401 KAR 5:029. General provisions.

401 KAR 5:031. Surface water standards.

401 KAR 5:035. Treatment requirements; compliance.

#### **DEPARTMENT OF EDUCATION**

##### **Bureau of Instruction**

##### **Instructional Services**

704 KAR 3:265. Nutrition education and training plan.

##### **Teacher Certification**

704 KAR 20:235. Learning and behavior disorders; teacher's provisional certificate.

#### **DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION**

##### **Hazardous Materials**

815 KAR 30:050. Fireworks; approval of exempted novelties.

#### **DEPARTMENT FOR HUMAN RESOURCES**

##### **Bureau for Health Services**

##### **Drug Formulary**

902 KAR 1:055. Meclizine hydrochloride.

902 KAR 1:110. Diphenhydramine hydrochloride.

902 KAR 1:280. Chloral hydrate.

##### **Sanitation**

902 KAR 10:050. Refuse bins.

##### **Radiology**

902 KAR 100:051. Specific licenses for human use.

902 KAR 100:052. Broad scope licenses.

902 KAR 100:057. In vitro and general medical license.

902 KAR 100:058. Sale or distribution to persons exempted from licensing.

##### **Bureau for Social Services**

##### **Child Welfare**

905 KAR 1:085. Foster care review.

The meeting was adjourned at 1:15 p.m., to meet again on Wednesday, January 2, 1980, at 10 a.m., in Room 327 of the Capitol.



# *Administrative Register* <sup>of</sup> *kentucky*

## Cumulative Supplement

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## Regulation Locator—Effective Dates

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301 KAR 1:120			Repealed	1110	8-1-79	Amended	1098	8-1-79
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