JANUARY 1, 1994

ADMINISTRATIVE REGISTER

PART 2

Due to the size of the January 1, 1994, Administrative Register, it could not be stapled as one document. Therefore, this section is a continuation of the January Register.

PROPOSED AMENDMENTS RECEIVED AS OF NOON, DECEMBER 15, 1993

KENTUCKY LEGISLATIVE ETHICS COMMISSION
(Proposed Amendment)

2 KAR 2:010. Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement.

RELATES TO: KRS 6.666(6) to (13), 6.807
STATUTORY AUTHORITY: KRS 6.666(5)
NECESSITY AND FUNCTION: KRS 6.807 requires each legislative agent and employer to file an initial registration statement, periodic updated registration statements, and a notice of termination of engagements. This administrative regulation establishes the required forms [~~registration statement~~].

Section 1. The registration forms and termination forms required by KRS 6.807 shall be mailed to the Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, Kentucky 40601.

Section 2. (1) The "Initial Legislative Agent/Employer Registration Statement", "Legislative Agents Updated Registration Statement", "Legislative Agents Notice of Termination of Engagement", "Employers Updated Registration Statement", "Employers Notice of Termination of Engagement", are [~~(KLEC 7/93)" is~~] incorporated by reference.

(2) These documents [~~This document~~] may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, Capitol Annex, Room 318, Frankfort, KY 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE GEORGE E. BARKER, Chair
APPROVED BY AGENCY: November 23, 1993
FILED WITH LRC: December 6, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Legislative Ethics Commission Office in Room 318, Capitol Annex, Frankfort, Kentucky 40601, 10 a.m. on January 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Michael O'Connor, Attorney, Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Michael O'Connor
(1) Type and number of entities affected: The initial registration statements, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, the employer's updated registration statement, and the employer's notice of termination of engagement, will affect all legislative agents and their employers. The number of legislative agents is anticipated to be as large as 600, and the number of employers is anticipated to be as large as 400. The exact numbers cannot be determined in advance.
(a) Direct and indirect costs or savings to those affected:
1. First year: KRS 6.809 requires that each employer of one or more legislative agents shall pay a fee of $250 for registration which shall be valid through the next 31st day of December of an odd-numbered year, unless previously terminated. This regulation adds no additional costs.
2. Continuing costs or savings: KRS 6.807 requires that an employer will pay the $250 fee each time the employer re-registers after expiration on the 31st day of December of an odd-numbered year, or reregisters after voluntarily terminating registration before it expires. This regulation adds no additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional factors which will increase or decrease costs.
(b) Reporting and paperwork requirements: KRS 6.807 requires that each legislative agent and employer shall file an initial registration statement with the Legislative Ethics Commission within 7 days following engagement. Updated registration statements are required to be filed by employers of legislative agents and by legislative agents on or before the 15th day of January, February, March, April, May, and September of even numbered years and the 15th day of January, May, and September of odd numbered years. Notice of termination forms must be filed with the commission within 30 days after the termination of engagement. This regulation creates the required forms.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs to the Legislative Ethics Commission will be approximately one cent per page for printing costs. The original printing of 5,000 pages will cost $50. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.
2. Continued costs or savings: The costs should be consistent on an annual basis.
3. Additional factors increasing or decreasing costs: None known.
(b) Reporting and paperwork requirements: KRS Chapter 6 requires the commission shall make the completed forms available for public inspection, and shall maintain an alphabetical index. Completed forms shall be preserved for 2 years. The commission shall provide the Legislative Research Commission and every member of the General Assembly with a list of every registered legislative agent and employer on or before the 10th day of every month. This regulation adds no additional requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The forms are required by the statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: No conflict determined.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict determined.
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all legislative agents and employers.

FINANCE AND ADMINISTRATION 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 61.705, 78.510 to 78.852[~~, Acts 1992, c. 462, Part III, Section 16, p. 2045~~]

STATUTORY AUTHORITY: KRS 16.576, 16.640, 61.559, 61.645, 78.780

NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545 require the Board of Trustees of Kentucky Retirement Systems to determine the employer contribution rate based on an actuarial valuation. [~~On November 21, 1991, the Board of Trustees of Kentucky Retirement Systems accepted the results of an actuarial valuation and adopted an employer contribution rate of 8.66% for the Kentucky Employees Retirement System (KERS) nonhazardous employees and 17.55% for hazardous duty employees; adopted an employer contribution rate of 8.82% for the County Employees Retirement System (CERS) nonhazardous employees and 18.47% for hazardous duty employees; and adopted an employer contribution rate of 21.84% for the State Police Retirement System (SPRS). The Acts 1992, c. 462, Part III, Section 16, p. 2045, provides that, notwithstanding KRS 61.565, it is the intent of the General Assembly that from July 1, 1992 through June 30, 1994 the employer contribution rate for the KERS shall be no more than 7.65% for nonhazardous duty employees and 15.05% for hazardous duty employees; and for the same period the employer contribution for employees of the SPRS shall be no more than 19.57%.~~] 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 administrative 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 KERS, CERS and SPRS. [~~The Board of Trustees of Kentucky Retirement Systems perceives a conflict between KRS 61.565 and Acts 1992, c. 462, Part III, Section 16, p. 2045. This regulation establishes the employer contribution rates in a manner consistent with the provisions of KRS 61.565, which the Board of Trustees of Kentucky Retirement Systems feels compelled to follow until such time as the conflict is resolved. A copy of the opinion upon which this decision was based is attached.~~]

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation effective July 1, 1994 [~~1993~~] shall be as follows:

KRS 61.565	State Police Retirement System	21.78 [~~21.84~~]%
KRS 61.565	Kentucky Employees Retirement System	8.56 [~~8.66~~]%
KRS 61.565	County Employees Retirement System	8.77 [~~8.82~~]%
KRS 61.592	Kentucky Employees Retirement System	17.97 [~~17.86~~]%
KRS 61.592	County Employees Retirement System	18.32 [~~18.49~~]%

Section 2. Effective July 15, 1988, the interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:

(1) For time elapsed from date of refund eight (8) percent compounded annually.

(2) The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board or by court order or by order of the Human Rights Commission shall be at the rate of zero percent, if the refund is recontributed within a reasonable period of time.

Section 3. The legal rate of interest as referenced in Section 7 of 200 KAR 12:010 (an administrative regulation relating to computing back pay after reinstatement) shall be the actuarial assumed interest rate set forth in Section 1 of 105 KAR 1:040.

Section 4. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate between two and one-half (2 1/2) percent and six (6) percent as determined by the board.

Section 5. 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, unless the provisions of subsections (1) through (5) of this section are applicable and result in a higher percentage payable:

(1) A SPRS, CERS Hazardous or KERS Hazardous duty member who is age fifty (50) or older and would attain twenty (20) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factors as follows:

TABLE A

Years Required to Complete 20 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A KERS or CERS nonhazardous member who is age fifty-five (55) or older and would attain twenty-seven (27) 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 B

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
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%

(3) A KERS or CERS nonhazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) with twenty-five (25) or more years of service (at least fifteen (15) of which are current service) shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%

(4) A KERS or CERS nonhazardous member with less than twenty-five (25) years of service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on TRS, SPRS, CERS Hazardous or KERS Hazardous Early retirement eligibility, and would have attained twenty-seven (27) or more years of service (fifteen (15) of which would be current service) on or before reaching his 65th birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table B based on the number of years required to complete twenty-seven (27) 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 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%

(5) A SPRS, CERS Hazardous or KERS Hazardous member who dies prior to age fifty (50) and would have attained twenty (20) or more years of service (fifteen (15) of which would be current service) on or before reaching his 55th birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty (20) 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.

TABLE E

Years Required to Complete 20 Years Service	Percentage Payable
0	100.0%
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%

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%

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.

(6)(a) Benefits paid in the event of death prior to retirement pursuant to subsection (1) through (5) of this section, shall be:

determined by "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors"; and (2) reduced as required by KRS 61.640.

(b) "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors", effective July 14, 1990 are incorporated by reference in this administrative regulation. These factors may be read or copied at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

Section 6. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JOHN D. ROBEY, Chairman

APPROVED: November 18, 1993

FILED WITH LRC: November 29, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 10 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: 1,325 state and local government agencies.

(a) Direct and indirect costs or savings to those affected:

1. First year:

	% of Payroll	Dollars
CERS nonhazardous	-.05%	-$459,200
CERS hazardous	-.17%	-$264,700
KERS nonhazardous	-.10%	-$1,025,900*
KERS hazardous	+.11%	+$75,300*
SPRS	-.06%	-$18,400*

*These estimated costs are based on the rates adopted by the Board of Trustees of the Kentucky Retirement Systems in accordance with KRS 61.565 and previously established by this administrative regulation (8.66% for KERS nonhazardous; 17.86% for KERS hazardous; and 21.84% for SPRS). The agencies participating in the County Employees Retirement System are paying the rates established by this administrative regulation. State agencies are paying rates set out in the 1992-94 Biennial Budget (7.65% for KERS nonhazardous; 15.05% for KERS hazardous and 19.57% for SPRS). Based on the rates set out in the 1992-94 Biennial Budget and currently being paid by state agencies, the impact on state employers is as follows:

	% of Payroll	Dollars
KERS nonhazardous	+.91%	$9,336,000
KERS hazardous	+2.92%	$1,998,900
SPRS	+2.21%	$676,300

2. Continuing costs or savings: The employer contribution rates are determined each year in accordance with KRS 61.565.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements. There is no change to reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is no effect on the promulgating body.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no change to reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: The rates established in this administrative regulation will provide a slight savings to local government agencies over the next fiscal year. State agencies have been instructed to use the rates previously set in this administrative regulation for budgeting purposes.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The funding method and determination of the contribution rate are set forth in KRS 61.565. The Board of Trustees has no alternative method under state statutes.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or administrative regulation in conflict with this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Yes. The contribution rates are tiered to reflect the costs and assumptions of the five groups within the three retirement systems administered by the Kentucky Retirement Systems.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects all local government agencies participating in the County Employees Retirement System.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation sets the employer contribution rate in accordance with KRS 61.565 to fund retirement benefits of full-time employees.

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

Revenues (+/-):

Expenditures (+/-): Employer contribution rates are decreased as follows:

	As % of Payroll	In Dollars (Estimated)
Nonhazardous employees	-.05%	-$459,200
Hazardous employees	-.17%	-$264,700

Other Explanation: This decrease in the contribution rate for CERS employees is determined in accordance with KRS 61.565. The decreased rate is sufficient to fund current retirement benefits.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:140. Procedures for the reinstatement of a certificate and permit to practice public accounting.

RELATES TO: KRS 325.330(6)
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: Procedures for reinstating certificate and permit to practice.

Section 1. A certificate holder who has allowed his permit to practice to expire shall be allowed to reinstate the permit within one (1) month of his [~~the~~] permit renewal deadline by submitting all renewal documents and renewal fees contained in 201 KAR 1:065 and paying a late fee of twenty-five (25) dollars. When the board has notified the licensee in writing of his failure to renew, the late fee shall increase to $100. [~~If the certificate holder fails to renew the permit to practice within one (1) year of the renewal date, he shall comply with the requirements of Section 2 of this administrative regulation.~~]

Section 2. If a certificate was [~~and permit to practice have been~~] revoked[~~, or were voluntarily surrendered,~~] for failure to satisfy the continuing professional education requirements, or voluntarily surrendered for any reason except when a complaint is pending before the board for any matter other than failure to obtain continuing professional education, the certificate and permit to practice [~~they~~] may be reinstated if the applicant for reinstatement submits:

(1) Documentation of successful completion of[~~:~~

~~(a) Forty (40) hours of the continuing professional education requirements for the first year after revocation or voluntary surrender, of which one-half (1/2) are accounting and auditing courses; or~~

~~(b) Documentation of successful completion of~~] Eighty (80) hours of [~~the~~] continuing professional education [~~for a revocation period longer than one (1) year~~], of which one-half (1/2) are accounting and auditing [~~courses~~]; and

(2) A money order or check for a total of:

(a) A new certificate fee of fifty (50) dollars;

(b) A permit to practice fee in accordance with 201 KAR 1:065, Section 1; and

(c) A reinstatement fee of $100.

Section 3. (1) If a certificate and permit to practice have been revoked for reasons other than failure to satisfy the continuing professional education requirements, they may be reinstated if the applicant for reinstatement submits to the board fifteen (15) days prior to the next scheduled meeting:

(a) A letter:

1. Requesting reinstatement;

2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of board; and

3. A statement of the reasons the board should reinstate him.

(2)(a) Except as provided in paragraph (b) of this subsection, the board:

1. Shall review the request for reinstatement; the findings of fact, conclusions of law, and board order; and

2. May affirm or deny the request; or

3. State in writing the corrective or remedial education, training or review required before reinstatement shall be granted.

(b) The board may decline to consider a request for reinstatement submitted to the board prior to the date for resubmission that is specified in the disciplinary order of the board.

(3)(a) If an applicant for reinstatement disagrees with the board's determination under this section, he may file a written request for a hearing before the board.

(b) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360 and 201 KAR 1:150.

JOHN N. CRAFT, President
APPROVED BY AGENCY: December 13, 1993
FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9:a.m., at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

REGULATORY IMPACT ANALYSIS

Contact Person: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: 10 Former CPAs annually.

1. First year: Will increase education costs by approximately $800. Cost reduced depending on courses person attends.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect on competition; applies only to those persons who allow his/her license to expire.

(b) Reporting and paperwork requirements: No impact.

(2) Effects on the promulgating administrative body: Minimal since reinstatement applications are currently checked.

(a) Direct and indirect costs or savings:

1. First year: No impact either positively or negatively.

2. Continuing costs or savings: No impact either negatively or positively.

3. Additional factors increasing or decreasing costs: No impact either negatively or positively.

(b) Reporting and paperwork requirements: This does not apply; same system used.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the only method to provide some assurance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or conflicting statute/regulation.

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No

TIERING: Is tiering applied? No. Only one class of former CPAs to be reinstated exists.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), 314.051(1)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY AND FUNCTION: To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. Eligibility for Licensure by Examination. To be eligible for licensure by examination, applicants shall:

(1) Hold a high school diploma or equivalent.

(2) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure.

(3) Submit an official transcript of nursing program.

(4) Submit [~~at least sixty (60) days prior to the date of the examination:~~

~~(a)~~] a properly executed application for licensure; [~~or, if applicable, an application for readministration of the examination;~~

~~(b) Current administration of examination fee;~~

~~(c)~~] current application for licensure fee; and one (1) passport type

[~~(d) Two (2)~~] photograph[~~s~~] (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) Apply to take and pass the national council licensure examination or its equivalent.

(10) Pay all necessary fees [~~to show evidence of meeting requirements~~] for application for licensure as stated in this section and, if applicable, Sections 2 and 4 of this administrative regulation.

(11) Meet the requirement of 902 KAR 2:150.

(12) An application for licensure is valid for a period of one (1) year from date filed with the board [~~or for a period of one (1) year from date last examination was written in Kentucky not to exceed two (2) years since the filing date of the original application for licensure in Kentucky.~~]

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only). This requirement shall not apply to the following:

1. An applicant who is licensed as a registered nurse in a United States jurisdiction;

2. An applicant who has received a graduate degree in nursing from a university or college in the United States; or

3. A graduate of a program of nursing in Canada.

(b) If licensed in another United States jurisdiction or country, verification of licensure as a nurse with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country and that no such action is currently pending.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1 of this administrative regulation.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3 Licensing Examination Standards. (1) The applicant shall pass the national council licensure examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings;

(d) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content,

(g) The examination is given under strict security measures;

Section 4. Retaking [~~Rewriting~~] the Examination. Examination candidates who fail to achieve a passing result may retake [~~rewrite~~] the examination after submission of retake application, and applicable fee and, after meeting the requirements as stated in Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation. The examination may be retaken no more often than once every three (3) months from the date the last examination was taken by the applicant. [~~and submission of current administration of examination fee.~~]

Section 5. Release of Examination Scores. The board shall not release examination numerical results to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing [~~for out of state graduates~~];

(3) [~~Other state boards of nursing when requested for licensure;~~

~~(4)~~] National Council of State Boards of Nursing Inc.

ROBERTA G. SCHERER, President

APPROVED BY AGENCY: December 10, 1993

FILED WITH LRC: December 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the January 26, 1994 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by the January 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Nathan Goldman

(1) Type and number of entities affected: Approximately 2,000 applicants for licensure yearly.

(a) Direct and indirect costs or savings to those affected: Eliminates one fee.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Adapts regulation to new computerized testing procedures.

(2) Effects on the promulgating administrative body: The board will no longer administer the licensure examination.

(a) Direct and indirect costs or savings: Eliminates administration of examination costs.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applicable. All applicants for licensure are treated the same.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:090. Temporary work permit.

RELATES TO: KRS 314.101(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: To protect and safeguard the health and safety of the citizens of Kentucky and to provide a means for applicants to be employed while application for a license is being processed.

Section 1. An applicant for a license by endorsement or examination to practice nursing in Kentucky may be issued a temporary work permit to practice until the license is issued or denied.

Section 2. Eligibility for Temporary Work Permit. (1) An applicant [~~A graduate of a board approved program of nursing in the United States or its territories~~] who meets requirements as stated in 201 KAR 20:070 and is declared eligible [~~approved to write the first licensing examination administered~~] by the board to take the licensing examination [~~following graduation~~] may be issued a temporary work permit [~~upon payment of administration of examination and licensure application fees~~].

(2) A graduate of a school of nursing outside the United States who meets requirements as stated in 201 KAR 20:070 or 201 KAR 20:110 as applicable and is approved and has passed the commission on graduates of foreign nursing schools examination may be issued a temporary work permit [~~upon payment of the administration of examination fee, if applicable, and licensure application fee~~].

(3) An applicant for a license by endorsement who meets requirements as stated in 201 KAR 20:110 and holds a current active license in another state may be issued a temporary work permit [~~upon proper completion of the application and payment of the licensure application fee~~].

(4) An applicant for a license by examination who meets requirements as stated in 201 KAR 20:070 and holds a current active license in another United States jurisdiction may be issued a temporary work permit [~~upon proper completion of the application and payment of all applicable fees~~].

Section 3. Limitations of Temporary Work Permit. (1) The applicant for licensure by examination [~~new graduate~~], while holding a temporary work permit, shall practice only in nursing situations where continuous, direct, on-site supervision is provided by a registered nurse, physician or dentist.

(2) The temporary work permit issued to an applicant who fails the national council licensure examination or its equivalent shall be null and void upon notification to applicant of examination results.

(3) An applicant who has failed the national council licensure examination or its equivalent shall not be issued a temporary work permit.

(4) The temporary work permit is nonrenewable and shall be valid only for the length of time required to process applications for endorsement or in the case of applications for licensure by examination, for no more than six (6) months from the first day of the month following completion of program of nursing requirements. [~~to conduct and determine the results of licensure examinations.~~]

(5) An individual who does not hold a current temporary work permit pending issuance of a current active license or who has received notification of failing the National Council Licensure Examination or its equivalent is prohibited from functioning in the capacity of a nurse.

(6) An individual who is employed or practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing as a nurse without a license and in violation of KRS 314.031 and subject to the penalties in KRS Chapter 314.

ROBERTA G. SCHERER, President

APPROVED BY AGENCY: December 10, 1993

FILED WITH LRC: December 13, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the January 26, 1994 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by the January 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Nathan Goldman

(1) Type and number of entities affected: Approximately 2,000 applicants for licensure by examination yearly.

(a) Direct and indirect costs or savings to those affected: Eliminates one fee.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: N/A

TIERING: Is tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees shall not exceed the amounts indicated for the following applications:

(a) Licensure as a registered nurse - seventy (70) dollars.

(b) Licensure as a licensed practical nurse - seventy (70) dollars.

(c) Biennial renewal of active license - fifty (50) dollars.

(d) Biennial renewal of inactive license - thirty-five (35) dollars.

(e) Reinstatement of license - seventy (70) dollars.

(f) Active to inactive license status - thirty-five (35) dollars.

(g) Inactive to active license status - fifty (50) dollars.

(h) Endorsement verification of Kentucky licensure or registration - twenty (20) dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - seventy (70) dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty (50) dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) dollars.

(3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof not to exceed the following amounts:

(1) Initial provider approval - $100.

(2) Reinstatement of provider approval - $100.

(3) Biennial renewal of approval - seventy-five dollars.

(d) Individual review of continuing education offerings - thirty-five (35) dollars

Section 3. Fees for Services. (1) The board shall collect fees for the following services not to exceed the amounts indicated:

(a) Applicants for ~~[Administration of examination for registered nurse]~~ licensure who are retaking the examination - sixty (60) dollars

(b) ~~[Administration of examination for practical nurse licensure - thirty-five (35) dollars.~~

~~(c)~~] Verification of licensure or registration letter - ten (10) dollars.

(c) ~~[(d)]~~ Copy of examination results or transcripts - ten (10) dollars.

(d) ~~[(e)]~~ Nursing certificate (optional) - thirty (30) dollars.

(2) The fee for copies of statutes, administrative regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall not exceed twenty-five (25) cents per page.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees.

(5) Applicants retaking the licensure examination shall:

(a) Submit fee for administration of examination prior to each time examination is taken.

(b) Submit new application and current fees if more than one (1) year has passed since date last examination was written or more than two (2) years have passed since the filing date of the original application.

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this administrative regulation, an application, which is not completed within one (1) year from the date the application form is filed with the board office, shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration will be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. (1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, shall be refunded upon submission of written request by candidate.

(2) Overpayment of five (5) dollars or more of current fee shall be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one (1) year and may be applied toward the fee to meet the requirements

for licensure or registration.

Section 8. Fees properly collected by the board are nonrefundable with the exceptions as stated in Section 6 of this administrative regulation.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: December 10, 1993
FILED WITH LRC: December 13, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the January 26, 1994 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by the January 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Nathan Goldman
(1) Type and number of entities affected: Approximately 2,000 applicants for licensure by examination yearly.
(a) Direct and indirect costs or savings to those affected: Changes nature of one fee, eliminates one other fee.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A
TIERING: Is tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.051, 314.071
STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: To assure that applicants for licensure or registration meet minimum requirements as set forth by the board. To provide consistency in procedures.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement applicants shall:
(1) Submit completed application to board office on original form supplied by the board;
(2) Submit current application [~~or examination~~] fee[s], as applicable;
(3) Submit official copy of court records of any misdemeanor and/or felony conviction with a letter of explanation;
(4) Report any disciplinary action taken or pending on nurse licensure applications or license in other jurisdictions;
(5) Have no disciplinary action pending by the board for violation of KRS Chapter 314;
(6) Have paid all monies due to the board;
(7) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;
(8) Submit additional information as requested by the board; and
(9) Meet additional requirements for:
(a) Licensure by examination as stated in 201 KAR 20:070.
(b) Licensure by endorsement as stated in 201 KAR 20:110.
(c) Licensure by reinstatement as stated in 201 KAR 20:225.
(d) Licensure by renewal as stated in 201 KAR 20:230.
(e) Inactive licensure status as stated in 201 KAR 20:095.
(f) Advanced registered nurse practitioner registration, renewal or reinstatement as stated in 201 KAR 20:056.

Section 2. A completed application form and all information needed to determine that an applicant meets requirements for licensure or registration must be postmarked or received by the board no later than the last day for renewal of license or registration [~~or at least sixty (60) days prior to date of the national council licensure examination~~].

Section 3. [~~With the exception of licensure by examination applications as stated in 201 KAR 20:240, Section 3(5)(b),~~] An application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: December 10, 1993
FILED WITH LRC: December 13, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the January 26, 1994 at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by the January 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Nathan Goldman

(1) Type and number of entities affected: Approximately 2,000 applicants for licensure by examination yearly.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Eliminates time limit to submit application.

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: N/A

TIERING: Is tiering applied? N/A

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS 324A.010, 324A.035, 324A.040

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to define the terms used in 201 KAR Chapter 30.

Section 1. (1) "Board" means the Kentucky Real Estate [~~Board of~~] Appraisers Board.

(2) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.

(3) "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals of one (1) to four (4) residential units in connection with federally and nonfederally related transactions.

(4) "Classroom hour" means fifty (50) minutes actual classroom instruction.

(5) "Federal financial institutions regulatory agencies" means the:

(a) Board of Governors of the Federal Reserve System;

(b) Federal Deposit Insurance Corporations;

(c) Office of the Comptroller of the Currency;

(d) Office of Thrift Supervision; and

(e) National Credit Union Administration.

(6) "Federally related transaction" means a real estate-related financial transaction that a federal financial institutions regulatory agency or the Resolution Trust Corporation:

(a) Engages in; or

(b) Contracts for; or

(c) Regulates; and

(d) For which it requires the services of:

1. Certified general real property appraiser;

2. Certified residential real property appraiser; or

3. Licensed real property appraiser.

(7) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.

(8) "Licensed nonfederal real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise nonfederally related transactions.

(9) "Real estate-related financial transaction" means any transaction that involves the:

(a) Sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(b) Refinancing of real property, or interests in real property; and

(c) Use of real property, or interests in property, as security for a loan or investment, including mortgage-backed securities.

(10) "Residential" means one (1) to four (4) residential units.

(11) "Trainee [~~Transitional licensed~~] real property appraiser" means an appraiser who has fulfilled the requirements for [~~transitional~~] licensure as a trainee real property appraiser established by the board to appraise real property in connection with federally and nonfederally related transactions.

DON C. PARIS, Chairman

APPROVED BY AGENCY: November 19, 1993

FILED WITH LRC: December 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 24th day of January, 1994 at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by the 19th day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 1,000 appraisers licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal amends an existing regulation. No other alternatives were deemed appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035, 324A.045, 324A.065

STATUTORY AUTHORITY: KRS 324A.030, 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) [~~the~~] general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;

(2) Certified residential real property appraiser;

(3) Licensed real property appraiser; or

(4) Trainee [~~Transitional licensed~~] real property appraiser.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units regardless of transaction complexity or value.

(3) A licensed real property appraiser [~~and a transitional licensed real property appraiser~~] may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less then $1,000,000;

(b) Complex, one (1) to (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

(4)(a) A trainee real property appraiser may perform appraisals of those properties which the supervising appraiser of the trainee is permitted to appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice.

(b) Separate appraisal logs shall be maintained for each supervising appraiser.

(c) The trainee real property appraiser shall record in the log for each appraisal the following:

1. Type of property;

2. Client name and address;

3. Address of appraised property;

4. Description of work performed;

5. Number of hours worked; and

6. Signature and state license or certification number of the supervising appraiser.

(d) The trainee real property appraiser shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall be licensed or certified by the board and in good standing and shall be responsible for the training and supervision of the trainee real property appraiser by:

1. Accepting responsibility for appraisal reports by the trainee real property appraiser by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

2. Reviewing reports by the trainee real property appraiser; and

3. Personally inspecting each appraised property with the trainee real property appraiser until the supervising appraiser determines that the trainee real property appraiser is competent in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice for the property type.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by the provisions of 201 KAR 30:050 and 201 KAR 30:060; and

(2) Applies to the board on the "Appraiser License/Certification Application Form."

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (July, 1992) is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Real Estate [~~Board of~~] Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

DON C. PARIS, Chairman

APPROVED BY AGENCY: November 19, 1993

FILED WITH LRC: December 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 24th day of January, 1994 at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by the 19th day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 1,000 appraisers licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal amends an existing regulation. No other alternatives were deemed appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards, and to protect the public. The function of this administrative regulation is to establish the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring compliance with the "Standards of Professional Appraisal Practice."

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee [~~transitional licensed~~] real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice."

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

Section 4. If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board. 201 KAR 30:070, Section 10, provides for the administrative process dealing with denial and suspension by the board.

Section 5. (1) "Uniform Standards of Professional Appraisal Practice (January, 1993)," Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference.

(2) It may be inspected, at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

DON C. PARIS, Chairman

APPROVED BY AGENCY: November 19, 1993

FILED WITH LRC: December 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 24th day of January, 1994 at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by the 19th day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 1,000 appraisers licensed in Kentucky.

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(2) Effects on the promulgating administrative body:

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(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal amends an existing regulation. No other alternatives were deemed appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

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

RELATES TO: KRS 324A.030, 324A.035, 324A.040, 324A.065

STATUTORY AUTHORITY: KRS 324A.035, 324A.040

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public. The function of this administrative regulation is to establish the examination, education, and experience requirements for certification as a certified general real property appraiser, certified residential real property appraiser, licensed real property appraiser, and trainee [~~or transitional licensed~~] real property appraiser.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, and licensed real property appraiser[~~, or transitional licensed real property appraiser~~] shall pass an examination that is specific for the certification or license applied for and has been:

(1) Approved by the board; and

(2) Approved by the Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 165 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed:

(a) 105 hours of approved instruction, for certification prior to January 1, 1994; and

(b) 165 hours of approved instruction, for certification on or after January 1, 1994 if required by the federally-established Appraiser Qualifications Board.

(3) An applicant for the licensed real property appraiser examination shall have completed seventy-five (75) hours of approved instruction.

(4) An applicant [~~to the board~~] for a license as a trainee real property appraiser shall have completed seventy-five (75) hours of approved instruction of which fifteen (15) hours shall relate to the Uniform Standards of Professional Appraisal Practice. [~~transitional license shall be issued a transitional license and shall meet the education requirement for licensure on or before the end of the second full year of license renewal or the transitional license shall automatically lapse.~~]

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction may have been completed at any time prior to application for certification or licensure.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

(a) Influences on real estate value;

(b) Legal consideration in appraisal;

(c) Types of value;

(d) Economic principles;

(e) Real estate markets and analysis;

(f) Valuation process;

(g) Property description;

(h) Highest and best use analysis;

(i) Appraisal statistical concepts;

(j) Sales comparison approach;

(k) Site value;

(l) Cost approach; and

(m) Income approach, including:

1. Gross rent multiplier analysis;

2. Estimation of income and expenses;

3. Operating expense ratios; and

4. Direct capitalization;

(n) Valuation of partial interests;

(o) Appraisal standards and ethics; and

(p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

(a) [~~1.~~] It is approved by the board;

(b) It [~~2.~~] complies with the provisions of this administrative regulation; [~~and~~]

(c) [~~(b)~~] It is documented by the applicant;

(d) [~~(c)~~] It is a course that requires at least fifteen (15) hours of instruction; and

(e) [~~(d)~~] An applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

1. File a written request with the board for receipt of credit;

2. Document the appraisal courses taught by title, date, place taught, and length of course; and

3. Elect to receive credit for either the:

a. Classroom hour requirement; or

b. Experience requirement.

(3) The board shall grant credit for courses to an applicant in which:

(a) The applicant [~~He~~] received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1,

1990; and

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions

(e) Proprietary schools; or

(f) Other providers.

(2) A provider shall be approved by the board if the provider [~~he~~]:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form;" and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser or a residential real property appraiser, an applicant shall have acquired two (2) calendar years appraisal experience.

(b) 1,000 hours of appraisal experience acquired within a calendar year shall constitute a calendar year appraisal experience.

(c) The two (2) calendar years appraisal experience may have been acquired in any two (2) calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(d) For certification as a general real property appraiser, fifty (50) percent of the appraisal experience shall consist of nonresidential appraisal experience.

(2) An applicant shall have acquired 2,000 hours of appraisal experience:

(a) Prior to initial licensure; or

(b) Within two (2) years of initial licensure for transitional licenses.

(3)(a) An applicant shall verify experience credit on forms approved and provided by the board [~~by affidavit~~].

(b) The board may request reports, file memoranda, and other documentation of appraisal experience[~~, including reports or file memoranda~~].

(4) Acceptable appraisal experience shall include:

(a) Fee and staff appraisal;

(b) Ad valorem tax appraisal;

(c) Review appraisal;

(d) Appraisal analysis;

(e) Real estate counseling;

(f) Highest and best use analysis;

(g) Feasibility analysis or study; and

(h) Teaching of appraisal courses as provided by this section.

Section 7. Continuing Education: Number of Hours Required. (1) Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:

(a) [~~(1)~~] Complete ten (10) hours of approved continuing education each license year; and

(b) [~~(2)~~] Furnish the board with proof of compliance.

(2) Trainee real property appraisers who remain in this classification in excess of two (2) years shall be required in the third and successive years to:

(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and

(b) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for ten (10) hours:

(a) Of approved continuing education courses; or

(b) For participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated By Reference. (1) The following material is incorporated by reference:

(a) "Appraisal Education Provider Application Form" (1992); and

(b) "Uniform Standards of Professional Appraisal Practice," (January 1993), Appraisal Standards Board of the Appraisal Foundation.

(2)(a) These documents may be inspected or obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) The "Uniform Standards of Professional Appraisal Practice," may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave, N.W., Suite 900, Washington DC, 20005.

DON C. PARIS, Chairman

APPROVED BY AGENCY: November 19, 1993

FILED WITH LRC: December 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 24th day of January, 1994 at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by the 19th day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 1,000 appraisers licensed in Kentucky.

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(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

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(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal amends an existing regulation. No other alternatives were deemed appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:010. Definitions for Title 401 Chapter 8.

RELATES TO: KRS Chapter 223, 224, 40 CFR 141.2

STATUTORY AUTHORITY: KRS Chapter 223, 224.10-100, 224.10-110, 40 CFR 141.2 (1993), [~~as amended at 54 FR 27,526 and 27,562 (1989),~~] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce statutes [~~rules~~] and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this administrative regulation is to define terms used by the cabinet in regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and PL 93-523, as amended, as well as to regulate certification of public water system operators pursuant to KRS Chapter 223.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:

(1) "Action level" means the concentration of lead or copper in water specified in 401 KAR 8:300, Section 3, which determines, in some cases, the treatment requirements contained in 401 KAR 8:300 that a water system is required to complete.

(2) "Approved source" means the source of the water whether it be from a spring, well, public water system, or other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.

(3) [~~(2)~~] "Auxiliary intake" means a piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.

(4) [~~(3)~~] "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, BAT shall be at least as effective as granular activated carbon.

(5) [~~(4)~~] "Blood lead level or PbB level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood (mg/dl).

(6) [~~(5)~~] "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(7) [~~(6)~~] "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. The advisory shall include information concerning all actions which by the affected public is advised to take.

(8) [~~(7)~~] "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for two (2) minutes at a rolling boil.

(9) [~~(8)~~] "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.

(10) [~~(9)~~] "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Bottled water systems shall be designated as community public water systems.

(11) [~~(10)~~] "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.

(12) [~~(11)~~] "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(13) [~~(12)~~] "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(14) [~~(13)~~] "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by these administrative regulations.

(15) [~~(14)~~] "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for one (1) or more types of the contaminants listed in these administrative regulations or for one (1) or more of the specific constituents or combinations of constituents listed.

(16) [~~(15)~~] "Check samples" means chemical and radiological samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.

(17) [~~(16)~~] "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are

destabilized and agglomerated into flocs.

(18) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems shall monitor. Each compliance cycle shall consist of three (3) three (3) year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; and the third begins January 1, 2011 and ends December 31, 2019.

(19) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three (3) year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

(20) [~~(17)~~] "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.

(21) "Consecutive public water systems" means two (2) or more public water systems with interconnected distribution systems, the purpose of which are to sell water from one (1) system to the next.

(22) [~~(18)~~] "Contaminant" means a physical, chemical, biological, or radiological substance or other matter found in water.

(23) [~~(19)~~] "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these administrative regulations.

(24) [~~(20)~~] "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(25) [~~(21)~~] "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(26) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(27) [~~(22)~~] "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(28) [~~(23)~~] "Cross connection" means a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(29) [~~(24)~~] "CT or CT calc" means the product of "residual disinfectant concentration" (C) in mg/1 determined before or at the first customer and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application points. "$CT_{99.9}$" means the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts.

$$\frac{\text{CT calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\sum \frac{(\text{CT calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one and zero-tenths (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(30) [~~(25)~~] "Department" means the Kentucky Department for Environmental Protection.

(31) [~~(26)~~] "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(32) [~~(27)~~] "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(33) [~~(28)~~] "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(34) [~~(29)~~] "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. If only one (1) "C" is measured, "T" means the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. If more than one (1) "C" is measured, "T" means for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

(35) [~~(30)~~] "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(36) [~~(31)~~] "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(37) [~~(32)~~] "Division" means the Division of Water.

(38) [~~(33)~~] "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(39) [~~(34)~~] "Dose equivalent" means the product of the absorbed dose from ionizing radiation and the factors that account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(40) "Effective corrosion inhibitor residual", for the purpose of 401 KAR 8:300 only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(41) [~~(35)~~] "Fee" means a monetary charge to be assessed by the cabinet.

(42) [~~(36)~~] "Filtration" means a process for removing particulate matter from water by passage through porous media.

(43) "First draw sample" means a one (1) liter sample of tap

water, collected in accordance with 401 KAR 8:300, Section 9(2)(b), that has been standing in plumbing pipes at least six (6) hours and is collected without flushing the tap.

(44) [~~(37)~~] "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(45) [~~(38)~~] "Free flowing tap or outlet" means a tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(46) [~~(39)~~] "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(47) [~~(40)~~] "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 8:700 inclusive, and is not under the direct influence of surface water.

(48) [~~(41)~~] "Groundwater under the direct influence of surface water" means water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with criteria established by the cabinet. The cabinet's determination of direct influence may be based on site-specific measurements of water quality as well as documentation of well construction characteristics and geology with field evaluation.

(49) "Initial compliance period" means the first full three (3) year compliance period: January 1993 to December 1995 for systems serving more than 150 service connections and January 1996 to December 1998 for systems having fewer than 150 service connections.

(50) "Large water system", for the purpose of 401 KAR 8:300 only, means a water system that serves more than 50,000 persons.

(51) "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to the lead line.

(52) [~~(42)~~] "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(53) [~~(43)~~] "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(54) [~~(44)~~] "Maximum contaminant level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to a user of a public water system as measured at points specified in 401 KAR 8:010 through 8:700 inclusive.

(55) [~~(45)~~] "Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes (TTHMs) produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(56) "Medium-size water system", for the purpose of 401 KAR 8:300 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

(57) [~~(46)~~] "Mineral water" means bottled water that contains no less than 500 parts per million total dissolved solids.

(58) [~~(47)~~] "Near the first service connection" means at one (1) of the twenty (20) percent of service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(59) [~~(48)~~] "Operator" means a person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or a portion thereof is operated in accordance with the laws and administrative regulations of the Commonwealth; or to supervise others in conducting the procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term "operator".

(60) "Optimal corrosion control treatment", for the purpose of 401 KAR 8:300 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(61) [~~(49)~~] "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth or any interstate body.

(62) [~~(50)~~] "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(63) [~~(51)~~] "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(64) [~~(52)~~] "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(65) [~~(53)~~] "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(66) [~~(54)~~] "Potable water" means water which meets the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive,, the quality of which is approved by the cabinet for human consumption.

(67) [~~(55)~~] "Private water supply" means a residential water supply located on private property for the use of residents, and not qualifying as a public or semipublic water system.

(68) [~~(56)~~] "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(69) [~~(57)~~] "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(70) [~~(58)~~] "Public water system" means a water system [~~owned by a person,~~] for the provision to the public of water for human consumption, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty- five (25) individuals daily at least sixty (60) days of the year, and includes [~~a~~] collection, treatment, storage and [~~or~~] distribution facilities under control of the operator of the system and [~~facility~~] used primarily in connection with the system and collection and pretreatment storage facilities not under control of the operator of the water system which are used primarily in connection with the water system. For the purposes of 401 KAR 8:020, 401 KAR 8:150, 401 KAR 8:200, "public water system" shall also include a commercial facility which serves food or drink to the public and is not using water purchased from a public water system. However, if a facility serving food to the public uses exclusively bottled water as defined by this section for the preparation of food and the cleaning of food preparation utensils and dishes to serve food, and the facility establishes [~~may establish~~], to the cabinet's satisfaction, that only potable water shall be received by the public, [~~and~~] the facility shall be exempt from this definition. A public water system is [~~either~~] a "community water system" or a "noncommunity water system" or, for the purposes of 401 KAR 8:020, 8:150 and 8:200, a "public water system", is a commercial facility which serves food or drink to the public regardless of the number served.

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25)

year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are either transient or nontransient.

1. "Transient noncommunity water system" means a water system which serves a transient group of people and does not meet the definition for nontransient noncommunity water system set forth below.

2. "Nontransient noncommunity water system" means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(71) [~~(69)~~] "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an internal organ or organ system.

(72) "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

(73) [~~(60)~~] "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/1 in a representative sample of water.

(74) [~~(61)~~] "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(75) [~~(62)~~] "Secondary contaminants" means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(76) [~~(63)~~] "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(77) [~~(64)~~] "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(78) [~~(65)~~] "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(79) [~~(66)~~] "Semipublic water system" means a water system made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(80) "Service line sample" means a one (1) liter sample of water, collected in accordance with 401 KAR 8:300, Section 9(2)(c), that has been standing for at least six (6) hours in a service line.

(81) "Single family structure", for the purpose of 401 KAR 8:300 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(82) [~~(67)~~] "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) m/h) resulting in substantial particulate removal by physical and biological mechanisms.

(83) "Small water system", for the purpose of 401 KAR 8:300 only, means a water system that serves 3,300 persons or fewer.

(84) [~~(68)~~] "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these regulations.

(85) [~~(69)~~] "Standard Methods" means the 16th Edition of "Standard Methods for the Examination of Water and Wastewater," prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(86) [~~(70)~~] "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(87) [~~(71)~~] "Supplier of water" means a person who owns or operates a public water system.

(88) [~~(72)~~] "Surface water" means water which is open to the atmosphere and subject to surface runoff, or groundwater under the direct influence of surface water.

(89) [~~(73)~~] "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or a source of water supply for a public water system that has a free water surface exposed to the atmosphere, or groundwater under the influence of surface water.

(90) "System" means a public water system.

(91) [~~(74)~~] "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(92) [~~(75)~~] "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethane (THM) compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(93) [~~(76)~~] "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a forty-seven millimeter (47-mm) diameter membrane filter used for coliform detection.

(94) [~~(77)~~] "Trihalomethane (THM)" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(95) [~~(78)~~] "Turbidity" means the presence of suspended particulates, including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(96) [~~(79)~~] "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(97) [~~(80)~~] "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the cabinet.

(98) [~~(81)~~] "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(99) [~~(82)~~] "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:020, Section 2(18), a lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(100) [~~(83)~~] "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(101) [~~(84)~~] "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a

written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact John T. Smither

(1) Type and number of entities affected: The amendments to this regulation will affect approximately 918 public and semipublic water systems throughout Kentucky. This number will vary somewhat from month to month.

(a) Direct and indirect costs or savings to those affected: This regulation simply incorporates several new definitions which apply to 401 KAR Chapter 8 with three exceptions. These new definitions are a result of new federal regulations being incorporated into 401 KAR Chapter 8: Changes are made to clarify the meaning of "public water system", to define "system" and to define "consecutive public water systems." Although Chapter 8 will have cost impacts, this regulation, by itself, will not.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This regulation, which contains only definitions, will not affect reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body since only new definitions are incorporated.

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation incorporates new definitions which apply to 401 KAR Chapter 8. These new definitions are a direct result of new federal drinking water regulations. Any alternative definition would make Kentucky's regulations inconsistent with federal requirements. Three changes were made to clarify the existing meanings of "public water systems", system", and "consecutive public water system".

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation contains only definitions which apply to 401 KAR Chapter 8. While this regulation was not tiered, other regulations in Chapter 8 are tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This regulation contains only definitions relating to 401 KAR Chapter 8. This regulation will have no effect on revenues or expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.2 as amended at 56 Federal Register 3578, January 30, 1991, 56 Federal Register 26547 June 7, 1991 and 56 Federal Register 31838 July 17, 1992 establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. This regulation provides definitions to terms used in 401 KAR Chapter 8 relating to the regulation of public water systems.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 141.2 provides definitions relating to terms used in the regulation of public water systems.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The Cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to this regulation incorporate new Federal definitions which are identical.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS Chapters 223, 224, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15

STATUTORY AUTHORITY: KRS Chapter 223, 224.10-100, 224.10-110, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15 (1993), [as amended at 54 FR 27,530 (1989),] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce statutes and administrative [rules and] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this administrative regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.10-110 [224.032], as well as the Safe Drinking Water Act, as amended. [The amendments to this regulation are to add certain new recordkeeping and reporting requirements which have become necessary as a result of new federal requirements.]

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 8:700, inclusive except those noted in subsection (2) of this section. A commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.

(2) Exclusions. Except as stated above, this chapter does not apply to water systems in the following two (2) categories:

(a) Water systems which consist only of distribution and storage facilities, which do not have collection or treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these administrative regulations, and which do not sell water to any person; or

(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance and Safety Requirements. (1) Public and semipublic water systems. No person shall operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 8:700, inclusive. Water supply systems constructed prior to November 11, 1990 [the effective date of these regulations] may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or the system obtains a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.

(2) Cross-connections prohibited. All cross-connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health. [It shall be the responsibility of] Every public water system shall [to] determine if [whether] or where cross-connections exist and shall [to] immediately eliminate them.

(3) Bypasses. No bypass shall be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which shall [must] exist for its use.

(4) Auxiliary intakes. No auxiliary intake shall be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate the intake.

(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and a filter backwash, filter-to-waste drains or clearwell overflow lines, unless an approved air gap is provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.

(6) Proper operation and maintenance. The owner or operator of a public water system shall [at all times] properly operate and maintain all facilities and systems of treatment, intake and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.

(7) Reports to the cabinet.

(a) Monthly operating reports. The supplier of water shall file complete monthly operating reports with the cabinet. The reports shall be provided in a manner [on forms provided or] approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 14 [18] Reilly Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent. [Beginning with the month of July 1992 for subparagraph 1 of this paragraph, and January 1993 for subparagraph 2 of this paragraph,] The supplier of water shall submit the following reports to the cabinet no later than ten (10) days after the end of each month the public water system serves water to the public:

1. Turbidity measurements with maximum contaminant levels [as required by 401 KAR 8:200, Section 4(4) and (5)] and monitoring in accordance with [that section and] 401 KAR 8:150[, Section 3(2)(a) until June 29, 1993. After June 29, 1993, turbidity monitoring shall be in accordance with 401 KAR 8:150, Section 3(2)(a), with measurements in accordance with 401 KAR 8:150, Section 3(1)(d) and (2)(a), and maximum contaminant levels in accordance with 401 KAR 8:150, Section 2]. The supplier of water shall include the following turbidity information in the monthly operating report:

a. The total number of filtered water turbidity measurements taken during the month.

b. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 401 KAR 8:150, Section 2, for the filtration technology being used.

c. The date and value of any turbidity measurements taken during the month which exceed five (5) NTU.

2. Disinfection information specified in 401 KAR 8:150, Section 3(2)(b). The supplier of water shall include the following disinfection

information in the monthly operating report:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/1 in water entering the distribution system.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below the residual requirements as specified in 401 KAR 8:150, Section 1(1), and when the cabinet was notified as of the occurrence.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):

(i) Number of instances where the residual disinfectant concentration is measured.

(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured.

(iii) Number of instances where the residual disinfectant concentration is measured but does not measure at least two-tenths (0.2) milligrams per liter or ppm or the equivalent [~~not detected~~] and no HPC is measured.

(iv) Number of instances where [~~no~~] residual disinfectant concentration is less than two-tenths (0.2) milligrams per liter [~~detected~~] and where HPC is greater than 500/ml.

(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(vi) For the current and previous month the system serves water to the public the value of "V" in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where

a = the value in subclause (i) of this clause
b = the value in subclause (ii) of this clause
c = the value in subclause (iii) of this clause
d = the value in subclause (iv) of this clause
e = the value in subclause (v) of this clause

(vii) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:150, Section 3(1)(c), and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)2c(i) through (vi) of this subsection do not apply.

d. A system need not report the data [~~date~~] listed in clause a. of this subparagraph if all data listed in clauses a. through c. of this subparagraph remain on file at the system and the cabinet determines that the system has submitted all the information required by clauses a. through c. of this subparagraph for at least twelve (12) months.

3. Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (c) of this subsection. If the turbidity exceeds five (5) NTU, the system shall inform the cabinet as soon as possible in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system shall notify the cabinet as soon as possible in accordance with paragraph (c) of this subsection. The system also shall notify the cabinet by the end of the next business day whether or not the residual was restored to the residual required by 401 KAR 8:150, Section 1(1), within four (4) hours.

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR 8:010 through 8:700, inclusive, including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a line break as described in 401 KAR 8:150, Section 4(3), loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report required by paragraph (c) of this subsection is made at a time other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;

2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;

3. The date of analysis;

4. The laboratory and person responsible for performing analysis;

5. The analytical technique or method used; and

6. The results of the analysis.

(b) Bacteriological analysis records shall be kept at least five (5) years.

(c) Chemical analysis records shall be kept at least [~~for a period of~~] ten (10) years.

(d) Turbidity analysis records shall be kept [~~for a period of~~] at least one (1) year.

(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or a local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(g) Records concerning a variance or exemption granted to the system shall be kept no less then five (5) years following the expiration of the variance or exemption.

(9) Boil water notices and consumer advisories.

(a) Boil water notices and advisories. Public water systems and semipublic water systems may issue boil water notices or boil water advisories if the system believes [~~feels~~] a notice or advisory is warranted. The cabinet may direct that a boil water notice be issued when positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory. The cabinet may direct that a boil water advisory be issued when conditions within a public water system indicate a possible adverse health effect from microbiological contamination may result from consumption of the water distributed by a system. The cabinet may, when it determines circumstances warrant, issue a boil water notice or boil water advisory directly, rather than rely on a public or semipublic water system to issue the notice. All boil water notices or advisories shall remain in effect until the cabinet determines or approves the notice or advisory may be lifted.

(b) Consumer advisory. The cabinet may issue a consumer advisory if conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system or when other information of interest to the consumer exists. The advisory will notify affected persons of a required or recommended action that should be taken.

(10) How to issue notice or advisory. Boil water notices, boil water advisories, and consumer advisories shall be issued through newspapers, radio, television, or other media having an immediate

public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals which maintain public awareness. The notice or advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least two (2) minutes at a rolling boil.

(11) Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR 8:010 through 8:700 inclusive.

(12) Maps. Within twelve (12) months of November 15, 1990, public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show line size, cutoff valves, fire hydrants, flush hydrants, tanks, booster pumps, chlorination stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper documentation, lost documentation or other valid reason cannot comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for the tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and shall be available by November 16, 1991. Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units (NTU); an inability to maintain an adequate residual of a disinfection agent in any part of the system or a heterotrophic plate count (HPC) in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce a substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8:010 through 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity and disinfectant residuals may be performed by a person approved by the cabinet.

(17) Right of entry. The cabinet may enter[~~, during normal business hours,~~] an establishment, facility or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations which the cabinet has the authority to enforce. Entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provisions of 401 KAR 8:010 through 8:700, inclusive. The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing and other contact sports.

(b) Prohibition of large motor-driven craft or any craft with toilets.

(c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.

(d) No effluent from sewage treatment plants shall be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. Chemical additives and protective materials (such as paints and linings) used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct such stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 4(1) of this administrative regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 CFR 142.14 and 142.15, as amended at 54 Federal Register 27,557, 27,567, and 27,579 (1989), 56 Federal Register 3595 (1991) and 56 Federal Register 26562 (1991); hereby adopted without change.

Section 4. Incorporation by Reference. The following materials are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays, at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Ky. 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," 1992 [~~1987~~], published by the Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 14 [~~18~~] Reilly Road, Frankfort, Kentucky 40601.

(3) "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges" 1983,

published by the Kentucky Division of Water, Frankfort Office Park, 14 [18] Reilly Road, Frankfort, Kentucky 40601.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: The amendments to this regulation will affect approximately 918 public and semipublic water systems.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation will clarify disinfection requirements in public water system distribution systems, take out implementation language for turbidity requirements since those requirements will have been fully implemented by the time this regulation takes effect, and incorporate additional reporting requirements for the Cabinet as a result of Federal Regulations. The amendments will also require public water systems to notify the Cabinet when boil water notices or advisories are issued at the systems initiative and will require Cabinet permission to lift such notice.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendments to this regulation will require the Cabinet to submit additional reports to the Environmental Protection Agency, specifically, data related to Phase II and Phase V chemical tests from Public Water Systems and lead and copper data generated by public water systems. They will also require public water systems to notify the Cabinet when a boil water notice or advisory is issued.

(2) Effects on the promulgating administrative body: The amendments to this regulation will require the Cabinet to maintain and submit to EPA data relating to Phase II and Phase V chemical testing and lead and copper testing.

(a) Direct and indirect costs or savings: Additional time to handle additional data will be required. It is expected that this additional data management can be handled by current staff.

1. First year: Additional data will need to be maintained and submitted to EPA.

2. Continuing costs or savings: These reports will be on-going from year-to-year. However, not all public water systems will submit data in the same year.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The data management will be done through computer generated reports which are already maintained and submitted to EPA through the Federal Reporting and Data System (FRDS). Additional data will be added to this system.

(3) Assessment of anticipated effect on state and local revenues: This amendment is not expected to impact state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These reports are required by Federal Regulation; other methods of reporting would be unacceptable to EPA. Other amendments to this regulation are simply cleanups of existing language.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No regulation conflicts.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Although the amendments to this regulation are not tiered, this regulation is tiered to take into consideration different sizes and types of public water systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This regulation contains only housekeeping amendments and incorporates certain federal requirements for the Cabinet's recordkeeping and reporting. Provisions of this regulation require certain reports be submitted to the Cabinet by public water systems, which are often owned by local governments. However, these reports are unlikely to affect state or local revenues since costs are usually offset by fees for water service paid by the consumer. A local government could, however, choose to absorb these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 142.14 and 40 CFR 142.15 as amended at 56 Federal Register 3595 January 30, 1991 and 56 Federal Register 26562, June 7, 1991 establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2, State compliance standards. This regulation incorporates without change certain federal requirements for recordkeeping and reporting. Other amendments in this regulation are for clarification or housekeeping purposes unrelated to federal requirements.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 142.14 and 40 CFR 142.15 provide reporting and recordkeeping requirements for primacy agencies enforcing the Safe Drinking Water Act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The Cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are incorporated without change.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:040. Laboratory certification.

RELATES TO: KRS Chapter 224, 40 CFR 141.28

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572, 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS Chapter 224.10-110 directs the cabinet to enforce the statutes and administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This administrative regulation provides procedures whereby commercial or water system laboratories may be certified to test for various contaminant groups or constituents within a contaminant group.

Section 1. Laboratory Certification. [~~Certification of laboratories will be performed by~~] The U.S. Environmental Protection Agency or the cabinet may certify [~~for~~] all public water systems or commercial laboratories performing analyses for public water systems. Certification may be for one (1) or more contaminant groups or for a single constituent within a contaminant group. Each contaminant group requires a different certification, but different certifications may be accomplished during one (1) inspection.

Section 2. Application. Laboratories which desire certification shall submit a written request for the [~~such~~] certification to the cabinet. The cabinet may [~~will provide application forms and~~] request other information necessary to furnish the cabinet with the data needed to determine suitability for certification.

Section 3. Standards. Laboratories shall be certified in accordance with the "Manual for the Certification of Laboratories Analyzing Drinking Water," incorporated in Section 11 [~~14~~] of this administrative regulation, and other stipulations contained in this administrative regulation.

Section 4. Performance Evaluations. [~~Performance evaluation (PE) samples may be required by the cabinet for certification or for maintenance of certification.~~] For laboratories certified, or for those laboratories seeking certification to conduct chemical or bacteriological analyses, performance evaluations shall be performed.

Section 5. Certification of laboratories are performed by the cabinet for all public water system laboratories or commercial laboratories performing analyses for public water systems. Certifications will be performed on an annual basis with fees payable as set forth in 401 KAR 8:050.

Section 6. Public Water System Laboratories. Public water systems may establish their own laboratories. These laboratories shall be properly certified and shall maintain annual certification. Failure to achieve or maintain annual certification shall not relieve the public water system of the responsibility for reporting results of the required analyses from a certified laboratory.

Section 7. Requirements. Maintenance of certification shall be dependent on the following factors:

(1) Submittal of routine results. Except as provided in subsection (4) of this section, results of analyses performed in certified laboratories by and for public water systems shall be submitted to the cabinet by the tenth of the month following the specified testing period for which the samples were taken and shall be submitted to the public water system as soon as possible. The public water system is responsible for this reporting requirement.

(2) Performance evaluation. Performance evaluation (PE) samples shall be analyzed and the results submitted to the cabinet at the cabinet's request, not to exceed twice a year, unless the cabinet has reason to believe that quality assurance at a lab may be questionable.

(3) Deviations. Any deviation from accepted practice, listed on a report resulting from an on-site inspection, shall be corrected. A written explanation of the [~~such~~] deviation and steps taken to correct it shall be submitted to the cabinet within thirty (30) days of the issuance of the inspection report.

(4) Violations. The laboratory shall report any violation of maximum contaminant levels or other violation of tier one violations, as explained in 401 KAR 8:070, to the public water system and the cabinet within twenty-four (24) hours of sample analysis. The public water system shall begin check sampling within twenty-four (24) hours of notification of the violation.

(5) Twenty-four (24) hour call. Laboratories shall make provision for a twenty-four (24) hour emergency testing service.

(6) Minimum microbiological requirements. Laboratories certified to perform microbiological testing shall run a minimum of twenty (20) microbiological samples per month. New laboratories shall meet this standard within six (6) months of certification. Any significant deviation from this standard may result in decertification.

Section 8. Right of Entry. The certified lab shall permit the cabinet to conduct on-site surveys during normal business hours, without prior notification.

Section 9. Revocation of certification and downgrading of

certification shall be in accordance with the procedures set forth in the "Manual for the Certification of Laboratories Analyzing Drinking Water" incorporated in Section 11 of this administrative regulation. Laboratories which have been notified of a change of certification shall, within seventy-two (72) hours, notify public water systems which the laboratory serves, of the change in certification status and any impact that change could have on the public water system. Laboratories may, with permission of the cabinet, and after notice to the public water system, fulfill their obligations to public water systems to provide monitoring reports by contracting with a certified laboratory.

Section 10. Recognition of Out-of-state Laboratories. The cabinet may recognize laboratories outside of Kentucky upon submission of proof of Environmental Protection Agency certification, certification by a state having primary enforcement responsibility for the provisions of the Safe Drinking Water Act, or such other proof as the cabinet may require. Any Kentucky water system may enter into a contract with a certified out-of-state laboratory, if reporting time intervals and capabilities are maintained. Laboratories located outside Kentucky shall undergo an on-site inspection for certification for microbiological analysis. The on-site inspection shall be at the expense of the laboratory seeking microbiological certification. [~~If on-site inspection is necessary for certification of out-of-state laboratories, the laboratories shall bear the cost.~~]

Section 11. All analyses required by 401 KAR 8:010 through 8:700, inclusive, shall be performed in a certified laboratory and shall be in accordance with methods approved for drinking water by the United States Environmental Protection Agency (US EPA) or by the cabinet. The following documents are incorporated by reference, and are available for inspection and copying subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays, at the Division of Water, 14 [~~18~~] Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 814B-92-002, September 1992 [~~570/9-90/008, April 1990~~], U.S. EPA, Office of Drinking Water, Washington, D.C. This publication may be obtained through the division.

[~~Section 12. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation affects approximately 91 certified laboratories as well as an unknown number of laboratories which may in the future wish to be certified to provide services to public water systems in Kentucky.

(a) Direct and indirect costs or savings to those affected: The amendment to this regulation simply incorporates EPA's latest laboratory certification manual and clarifies that certification for microbiological labs outside Kentucky requires an on-site visit at the laboratories' expense. No direct costs to labs or the Cabinet are anticipated as a result of this amendment. Some additional expendables may have to be purchased with costs passed to customers. Performance evaluations will now be required for bacteriological certification, although the cabinet has previously had authority to require such evaluations.

1. First year: No costs or savings are anticipated.

2. Continuing costs or savings: No costs or savings are anticipated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs, and this amendment will have no effect on competition.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements are anticipated.

(2) Effects on the promulgating administrative body: This amendment will have no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: No direct or indirect cost or savings are expected.

1. First year: No costs or savings are expected.

2. Continuing costs or savings: No costs or savings are expected.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: This amendment will not change reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This amendment is not expected to affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to this regulation incorporate the latest EPA manual for certification of laboratories which run tests for public water systems and clarify requirements for laboratories outside Kentucky seeking microbiological certification. Laboratories which do testing for public water systems shall be certified in accordance with EPA requirements. No other laboratory certification manual for this purpose is available, and on-site visits are necessary for microbiological certification.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No

statute, regulation, or policy conflicts, overlaps, or duplicates with this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Laboratories may be certified for testing some contaminants and not others; i.e. a laboratory may run bacteriological tests but not chemical.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 141 provides that laboratories conducting analysis for compliance with the provisions of that regulation be certified either by the Environmental Protection Agency or by a central laboratory certified in the state by EPA for such purpose; thereby establishing certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminated the need for dual federal and state programs.

2. State compliance standards. The cabinet requires laboratories conducting analysis for compliance with 401 KAR Chapter 8 to be certified by the cabinet or EPA.

3. Minimum or uniform standards contained in the federal mandate. The Environmental Protection Agency publishes a manual of laboratory practices for certification of laboratories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:060. Variances and exemptions.

RELATES TO: KRS Chapter 224, 21 CFR 102.35, 110, 129 (1993), 40 CFR Part 142 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988, 42 USCA 300f, 300g, 300j, 21 CFR 103.35, 110, 129 (1993)

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the [~~such~~] primary enforcement responsibility. This administrative regulation provides for variances and exemptions from drinking water regulations which may be granted by the cabinet. It lists the requirements for applications for variances and exemptions and the conditions for approval or denial.

Section 1. Variances. (1) When granted. The cabinet may grant variances to the maximum contaminant levels in 401 KAR 8:010 through 8:700, inclusive, upon its finding that:

(a) Because of characteristics of the raw water sources which are reasonably available to the system, the system cannot meet the applicable maximum contaminant levels after application of the best available technology, treatment techniques, or other means, as prescribed by 401 KAR 8:010 through 8:700, inclusive; and

(b) The granting of a variance will not result in an unreasonable risk to the health of any person. A variance may also be granted from the requirements as to treatment techniques contained in 401 KAR 8:010 through 8:700, inclusive, if the public water system applying for the variance has demonstrated that because of the nature of the raw water source of the [~~such~~] system, the [~~such~~] treatment techniques are not necessary to protect the health of persons. A variance granted under this paragraph shall be conditioned upon monitoring or other requirements prescribed by the cabinet.

(2) Variance request. A supplier of water may request a variance by submitting a written request to the cabinet. The request shall contain all the information and data required by the cabinet, concerning the biological and chemical makeup of the raw water, the treatment techniques which are in place, and a complete analysis of the finished water, design criteria of the plant and any other information pertinent to the variance. The request shall include a proposed compliance schedule and a statement that the system shall perform monitoring and other requirements prescribed by the cabinet as a condition to the variance. An approved compliance schedule (including increments of progress), an approved monitoring plan, and any other requirements of the cabinet shall be in place before a variance is granted. The proposed compliance schedule shall include the date by which arrangement for alternative raw water source or improvement of existing raw water source will be completed, the date of initiation of the connection of the alternative raw water source or improvement of existing raw water source, and the date by which final compliance is to be achieved.

(3) Factors considered. The cabinet may consider such factors as the availability and effectiveness of treatment techniques, costs, and other economic considerations, such as the cost of implementing other treatment techniques, improving source water quality, or using an alternate source. In considering a variance request to a required treatment technique, the cabinet may consider such factors as the quality of the water source and any source protection measures provided by the water system.

(4) Public hearing.

(a) Before a variance and compliance schedule will be granted, the applicant will notify the public of the opportunity for a public hearing on the variance and compliance schedule. The notice shall be published by the applicant at the time the variance request and compliance schedule are filed with the cabinet. Publication shall be in a manner which conforms to 401 KAR 8:070, Section 1(1)(a), (b) or (e), [~~or~~] (2), or (3), whichever is applicable to the public water system. Repeat notices are not necessary. A copy of the notice shall be submitted to the cabinet within one (1) week of publication. The notice shall grant a period of at least thirty (30) days during which any person may request that a public hearing be held, and shall contain a summary of the proposed variance and schedule of compliance.

(b) Requests for public hearing may be submitted to the cabinet and shall include the name, address, and telephone number of the individual or organization requesting the hearing, along with the signature of the person or responsible official of the organization requesting the hearing.

(c) A hearing convened pursuant to this subsection will be conducted before persons designated by the cabinet.

(d) If a hearing is requested or if the cabinet determines a hearing is desirable, the cabinet will notify the public water system of the time and place of the hearing. The public water system shall notify the public of the time and place of the hearing, at least fifteen (15) days

prior to the hearing, in a manner consistent with paragraph (a) of this subsection.

(e) The variance and compliance schedule will become effective when the cabinet confirms or revises the variance and compliance schedule, or will not become effective if the cabinet denies the variance and compliance schedule. The cabinet's decision will be based upon the hearing recommendations, if any, and other relevant information.

(5) Time limitations. No variance and compliance schedule shall be for a period exceeding one (1) year, but may be renewed in one (1) year increments with opportunity for public hearing on the renewals, in accordance with subsection (4) of this section.

Section 2. Exemptions. (1) When granted. The cabinet may exempt a public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of 401 KAR 8:010 through 8:700, inclusive, upon a determination by the cabinet that, due to compelling factors, which may include economic factors:

(a) The public water system is unable to comply with the [~~such~~] contaminant level or treatment technique requirement;

(b) The public water system was in operation on the effective date of the [~~such~~] contaminant level or treatment technique requirement, or, if the system was not in operation by that date, no reasonable alternative source of drinking water is available to the [~~such~~] new public water systems; and

(c) The exemption does not result in an unreasonable risk to health.

(2) Exemption request. A supplier of water may request an exemption from any requirement of 401 KAR 8:010 through 8:700, inclusive, respecting a maximum contaminant level or treatment technique requirement, or both, by submitting a written request for exemption to the cabinet. The request shall specify the nature and duration of exemption requested; relevant analytical results of water quality sampling of the system, including samples of raw and finished water and samples required by 401 KAR 8:010 through 8:700, inclusive; an explanation of the compelling factors, such as time or economic factors which prevent the system from achieving compliance; and other information pertinent to the application, including a proposed compliance schedule.

(3) Consideration of an exemption request. In its consideration of an exemption request, the cabinet may consider [~~such~~] factors such as the construction, installation or modification of treatment equipment or systems; the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and the economic feasibility of compliance.

(4) Compliance schedule. An exemption shall not be granted if the request does not include a compliance schedule, including increments of progress, for each contaminant level or treatment technique for which the exemption is granted. The compliance schedule may include control measures or other requirements of the cabinet to maintain the validity of the exemption.

(5) Public hearing. No exemption and compliance schedule (including an extension of any existing exemption and compliance schedule) shall become effective without the opportunity for a public hearing. Procedures for requesting and conducting a public hearing for an exemption shall be the same as those for variances as set forth in Section 1(4) of this administrative regulation.

(6) Time limitations. Exemptions shall not exceed twelve (12) months. The cabinet may extend an exemption for up to three (3) years, if it finds that the public water system must install capital improvements to comply and cannot complete such improvements without an extension; or that the water system has entered into an enforceable agreement to become part of another public water system; and if it finds that the water system is taking all practicable steps to comply with the administrative regulations. Systems serving fewer than 500 service connections may receive further renewals in increments of two (2) years, if the system needs financial assistance to comply and is taking all practical steps to meet the requirements of 401 KAR 8:010 through 8:700, inclusive.

Section 3. Disposition of a Variance or Exemption Request. The cabinet will act on any variance or exemption request submitted to it, within (90) days of receipt of the request.

(1) Variance or exemption denied. If the cabinet makes a preliminary determination to deny the application for a variance or exemption, it will notify the applicant of its intention to issue a denial. The notice will include a statement of reasons for the proposed denial and will offer the applicant an opportunity to present, within thirty (30) days of receipt of the notice, additional information or argument to the cabinet. The cabinet will make a final determination to grant or deny the request within thirty (30) days after receiving any [~~such~~] additional information or argument. If no additional information or argument is submitted by the applicant, the application shall be denied.

(2) Variance or exemption granted:

(a) If the cabinet proposes to grant a variance or exemption, it will notify the applicant of its preliminary determination. The notice shall [~~will~~] identify the variance or exemption, the facility covered, and the conditions under which the variance or exemption may be terminated; and will specify the proposed termination date of the variance or exemption, unless otherwise terminated.

(b) No variance or exemption shall be effective until the opportunity is provided for a public hearing on the proposed variance or exemption.

Section 4. Termination of a Variance or Exemption. Any variance or exemption granted by the cabinet pursuant to this administrative regulation shall terminate at the earliest of the following dates:

(1) The termination date specified at the time the variance or exemption is issued;

(2) The date the system comes into compliance with 401 KAR 8:010 through 8:700, inclusive;

(3) The date the cabinet determines that the system has failed to comply with the finalized schedule;

(4) The date the cabinet determines that the raw water source requires a specified treatment technique to protect the health of persons served (applicable to a variance only); and

(5) The date the cabinet finds that the water system has failed to comply with monitoring and other requirements prescribed by the cabinet as a condition to the granting of the variance (applicable to a variance only).

Section 5. Best Available Technology for Variances and Exemptions from the Maximum Contaminant Levels for Organic and Inorganic Chemicals. (1) The following are the best available technologies for achieving compliance with the maximum contaminant levels for organic and volatile organic chemicals listed in 401 KAR 8:400 and 8:420:

CONTAMINANT	BEST AVAILABLE TECHNOLOGIES PTA[1]	GAC[2]	OX[3]
(a) Benzene	X	X	
(b) Carbon tetrachloride	X	X	
(c) 1,2-Dichloroethane	X	X	
(d) Trichloroethylene	X	X	
(e) para-Dichlorobenzene	X	X	
(f) 1,1-Dichloroethylene	X	X	
(g) 1,1,1-Trichloroethane	X	X	
(h) Vinyl chloride	X		
(i) cis-1,2-Dichloroethylene	X	X	
(j) 1,2-Dichloropropane	X	X	
(k) Ethylbenzene	X	X	
(l) Monochlorobenzene	X	X	

(m) o-Dichlorobenzene	X	X	
(n) Styrene	X	X	
(o) Tetrachloroethylene	X	X	
(p) Toluene	X	X	
(q) trans-1,2-Dichloroethylene	X	X	
(r) Xylenes (total)	X	X	
(s) Alachlor	X	X	
(t) Aldicarb	X		
(u) Aldicarb sulfoxide		X	
(v) Aldicarb sulfone		X	
(w) Atrazine	X		
(x) Carbofuran		X	
(y) Chlordane		X	
(z) Dibromochloropropane	X	X	
(aa) 2,4-D		X	
(bb) Ethylene dibromide	X	X	
(cc) Heptachlor		X	
(dd) Heptachlor epoxide		X	
(ee) Lindane	X		
(ff) Methoxychlor		X	
(gg) PCBs		X	
(hh) Pentachlorophenol		X	
(ii) Toxaphene		X	
(jj) 2,4,5-TP	X		
(kk) Benzo(a)pyrene		X	
(ll) Dalapon	X		
(mm) Dichloromethane	X		
(nn) Di(2-ethylhexyl)adipate	X	X	
(oo) Di(2-ethylhexyl)phthalate		X	
(pp) Dinoseb	X		
(qq) Diquat		X	
(rr) Endothall		X	
(ss) Endrin	X		
(tt) Glyphosate			X
(uu) Hexachlorobenzene			X
(vv) Hexachlorocyclopentadiene	X	X	
(ww) Oxamyl (Vydate)		X	
(xx) Picloram	X		
(yy) Simazine	X		
(zz) 1,2,4-Trichlorobenzene	X	X	
(aaa) 1,1,2-Trichloroethane	X	X	
(bbb) 2,3,7,8-TCDD (Dioxin)		X	

[1] Packed Tower Aeration
[2] Granular Activated Carbon
[3] Oxidation (Chlorination or Ozonation)

(2) The following are hereby identified as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic chemicals listed in 401 KAR 8:250:

CHEMICAL NAME	BAT
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6[2],7
Cyanide	5,7,10
Mercury	2[1],4,6[1],7[1]
Nickel	5,6,7
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2[3],6,7,9
Thallium	1,5

[1] BAT only if influent Hg concentrations less than or equal to ten (10) microgram/1iter.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

Key to BATS in Table

1 = Activated Alumina
2 = Coagulation or Filtration, except for systems with less than 500 service connections
3 = Direct and Diatomite Filtration
4 = Granular Activated Carbon
5 = Ion Exchange
6 = Lime Softening, except for systems with less than 500 service connections
7 = Reverse Osmosis
8 = Corrosion Control
9 = Electrodialysis
10 = Chlorine
11 = Ultraviolet

(3) Community water systems and nontransient noncommunity water systems shall install and use any treatment method identified in subsection (1) and (2) of this section as a condition for granting a variance except as provided in subsection (4) of this section. If, after the system's installation of the treatment method, the system cannot meet the MCL, that system shall be eligible for a variance.

(4) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in subsections (1) and (2) of this section would only achieve a de minimis reduction in contaminants, the cabinet may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(5) If the cabinet determines that a treatment method identified in subsection (4) of this section is technically feasible, the cabinet may require the system to install and use that treatment method in connection with a compliance schedule issued under the provisions of this administrative regulation. The cabinet's determination shall be based upon studies by the system and other relevant information.

(6) The cabinet may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption from the requirements of 401 KAR 8:250, 8:400, and 8:420, to avoid an unreasonable risk to health. A public water system may be required to use bottled water and point-of-use devices or other means, but not point-of-entry devices, as a condition for granting an exemption from corrosion control treatment requirements for lead and copper in 401 KAR 8:300 to avoid an unreasonable risk to health. A public water system may be required to use point-of-entry devices as a condition for granting an exemption from the source water treatment and lead service line replacement requirements for lead and copper under 401 KAR 8:300 to avoid an unreasonable risk to health.

(7) Public water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of 401 KAR 8:250, 8:400, and 8:420, or an exemption from the requirements of 401 KAR 8:300 shall meet the requirements specified in either paragraph (a) or (b) of this subsection and paragraph (c) of this subsection:

(a) The public water system shall develop and put in place a monitoring program that has been approved by the cabinet and that provides reasonable assurances that the bottled water meets all maximum contaminant levels. The public water system shall monitor a representative sample of the bottled water for all contaminants regulated under 401 KAR 8:250, 8:400, and 8:420 during the first three (3) month period that it supplies the bottled water to the public, and annually thereafter. The public water system shall submit results of the monitoring program to the cabinet annually.

(b) The public water system shall obtain a certification from the

bottled water company that the bottled water supplied has been taken from an "approved source", as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80 (g)(1) through (3); and the bottled water does not exceed any maximum contaminant levels or quality limits as set out in 21 CFR 103.35, 110, and 129 (1993) all hereby incorporated without change. The public water system shall provide the certification to the cabinet the first quarter after it supplies bottled water and annually thereafter.

(c) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system via door-to-door bottled water delivery.

(8) Public water systems that use point-of-use or point-of-entry devices as a condition for obtaining a variance or an exemption from National Primary Drinking Water Regulations shall meet the following requirements:

(a) The public water system shall operate and maintain the point-of-use or point-of-entry treatment system.

(b) Before point-of-use or point-of-entry devices are installed, the public water system shall obtain cabinet approval of a monitoring plan which ensures that the devices provide health protection equivalent to that provided by central water treatment.

(c) The public water system shall apply effective technology under a cabinet-approved plan and maintain the microbiological safety of the water.

(d) The public water system shall obtain adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use and point-of-entry devices.

(e) The public water system shall consider in the design and application of the point-of-use or point-of-entry device, the potential for increasing concentrations of heterotrophic bacteria in water treated with activated carbon. The cabinet may require the public water system to utilize frequent backwashing, postcontractor disinfection, and heterotrophic plate count monitoring to ensure that the microbiological safety of the water is not compromised.

(f) The public water system shall assure the cabinet that buildings connected to the system have sufficient point-of-use or point-of-entry devices that are properly installed, maintained, and monitored such that all consumers will be protected.

(g) If the use of a point-of-entry device is a condition for granting an exemption from the treatment requirements for lead and copper under 401 KAR 8:300, the public water system shall assure the cabinet that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap. ~~[Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]~~

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation affects approximately 809 public water systems. This number may vary from month to month.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation incorporate special requirements for granting a variance or exemption to public water systems for certain organic or inorganic chemical maximum contaminant levels. No variance or exemption has ever been granted or requested. Therefore, no costs or savings are anticipated.

1. First year: No costs or savings are anticipated.

2. Continuing costs or savings: No costs or savings are anticipated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No costs or savings are anticipated. However, if a public water system were to make a variance or exemption request from a chemical maximum contaminant level, a thorough engineering study of the public water system would be required. While many factors could affect the cost of such a study, $20,000 to $50,000 would not be an unreasonable estimate. Also, additional costs could be generated by the study (additional treatment applications, for instance) before a variance or exemption would or could be granted.

(b) Reporting and paperwork requirements: If a public water system were to request and receive a variance or exemption, reporting or paperwork requirements could be significant as a condition of receiving the variance or exemption. For instance, additional monitoring could be required with reports submitted to the cabinet on a regular basis. However, no variance or exemption request has ever been made and none is expected.

(2) Effects on the promulgating administrative body: The amendments to this regulation are not expected to have any affect on the promulgating administrative body since no variance or exemption has been requested or granted. Although the current amendments to this regulation would require the cabinet to evaluate a substantial amount of engineering studies if a request were received, much of this information would be required under existing regulatory requirements and is being consolidated in this regulation through these amendments. No request for a variance or exemption is expected.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are anticipated since no variance or exemption request is anticipated.

1. First year: No costs or savings are anticipated. If a request for a variance or exemption is received, it would likely be an isolated event with any costs in staff time being absorbed by shifting current staff and priorities to absorb them.

2. Continuing costs or savings: No costs or savings are anticipat-

ed.

3. Additional factors increasing or decreasing costs: No other factors would increase or decrease costs.

(b) Reporting and paperwork requirements: Should a public water system apply for a variance or exemption, cabinet personnel would have to review engineering studies to determine whether or not a variance or exemption is appropriate. This will require a good deal of reporting and paperwork by both the cabinet and the public water system. No variance or exemption has been requested and none is anticipated.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to this regulation are a result of changing federal requirements. Alternative methods would not as effectively reflect federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, or duplicates this regulation. 401 KAR 8:200 & 8:150 contain some additional requirements for a variance or exemption from bacteriological requirements and filtration requirements respectively, but they do not conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Public water systems may request variances or exemptions from some or all requirements of this chapter with requirements varying from system to system.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This regulation relates to variances and exemptions from maximum contaminant levels for public water systems. While this regulation could cause public water systems to expend funds to obtain a variance or exemption, any such expenditure would likely be passed through to the consumer of water. However, a public water system owned by a local government could use general revenues to cover costs of operating the public water system, including costs associated with this regulation. No variance or exemption has ever been requested by a public water system or been granted by the cabinet.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 142.62 as amended at 56 Federal Register 3596 January 30, 1991 and 57 Federal Register 31848 July 17, 1992 establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. The cabinet sets out certain stipulations for granting a variance or exemption from maximum contaminant levels for public water systems.

3 Minimum or uniform standards contained in the federal mandate. 40 CFR 142.62 sets out certain stipulations for granting a variance or exemption from maximum contaminant levels for public water systems.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:070. Public notification.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142, 143.5

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 141.32 (1993), [~~as amended by Federal Register 27,556 (1989) and 54 Federal Register 27,527 (1989),~~] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the [~~such~~] primary enforcement responsibility. This administrative regulation relates to notification of the public when these administrative regulations have been violated by a public or semipublic water system. Several new sections of mandatory language have been added to reflect the expanded list of contaminants being regulated. [~~It has been substantially revised to reflect amendments to the Safe Drinking Water Act.~~]

Section 1. Notification for Tier One Violations. The owner or operator of a public or semipublic water system which fails to comply with an applicable maximum contaminant level or treatment technique established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, or which fails to comply with the requirements of a schedule prescribed pursuant to a variance or exemption, shall notify the public in accordance with the requirements of this section. These violations are Tier One violations and may be designated by the cabinet as ordinary or acute, with acute violations representing a class of violation which may represent an immediate threat to the public health, requiring consumers to take special precautions.

(1) Community public water systems. The owner or operator of a community public water system shall provide notice of a Tier One violation in the following manner:

(a) Newspaper. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but

in no case later than fourteen (14) days after the violation or failure has occurred. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(b) Mail. By mail delivery (by direct mail or with the water bill), or by hand delivery, no later than forty-five (45) days after the violation or failure. The cabinet may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five (45) day period. The cabinet, if it chooses to issue a waiver, will issue the waiver in writing and within the forty-five (45) day period; and

(c) Acute violation. In addition to the other requirements of this section, for violations of acute Tier One standards the owner or operator of the public water system shall furnish copies of the public notification to radio and television stations serving the area served by the public water system as soon as possible, but in no case later than seventy-two (72) hours after notice of the violation is received by the public water system from the laboratory. The following violations are acute violations:

1. Violations of the maximum contaminant level for total coliforms, if fecal coliforms or E. coli are present in the water distribution system, as provided in 401 KAR 8:200;

2. Violation of the maximum contaminant level for nitrate, as provided in 401 KAR 8:250; and

3. Other violations that the cabinet or public water system determines call for special care by the consumer.

(d) Repeat notice. For as long as the violation continues, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery.

(e) Newspaper not available. Community water systems in an area not served by a daily or weekly newspaper of general circulation may satisfy the requirements of this subsection by giving notice, within fourteen (14) days of the violation or failure, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(2) Noncommunity public water systems. The owner or operator of noncommunity water systems may comply with the notice requirements of this section by giving notice within seventy-two (72) hours for acute violations or within fourteen (14) days after other violations or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(3) Semipublic. The cabinet may require the owner or operator of semipublic water systems [~~may be required~~] to give notice equivalent to the requirements of noncommunity systems [~~at the discretion of the cabinet~~].

Section 2. Notification for Tier Two Violations. The owner or operator of a public or semipublic water system which fails to perform the monitoring required by 401 KAR 8:010 through 8:700, inclusive, fails to make a report required by 401 KAR 8:010 through 8:700, inclusive, fails to comply with a testing procedure established by 401 KAR 8:010 through 8:700, inclusive, is subject to a variance to 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, or is subject to an exemption from 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, shall notify persons served by the system as prescribed in this section. The violation or receipt of a variance or exemption shall be considered a Tier Two category violation.

(1) Community systems. The owner or operator of community public water systems shall give notice of Tier Two violations in the following manner:

(a) Newspaper. Notice of Tier Two violations shall be made by the owner or operator of a community public water system, within three (3) months of the violation or granting of a variance or exemption, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(b) Repeat notice. Following the initial notice given under this section, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption shall be given for as long as the variance or exemption remains in effect.

(c) Notice when newspaper not available. The owner or operator of community water systems not being served by a daily or weekly newspaper of general circulation may meet the requirements of paragraphs (a) and (b) of this subsection by giving notice, within three (3) months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(2) Noncommunity public water systems. The owner or operator of a noncommunity water system may comply with the notice provisions of this section by giving notice, within three (3) months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or the variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(3) Semipublic. The owner or operator of semipublic water systems may be compelled to give the notice required of noncommunity systems when public health considerations require it.

(4) Reduction in notification frequency. The cabinet may reduce notification frequency for minor violations when criteria for the reduction have been approved as a program revision, as stipulated by the U.S. Environmental Protection Agency.

Section 3. New Billing Units. The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding Tier One violation to all new billing units or new hookups prior to, or when service begins.

Section 4. General Content of Public Notices. Each notice required by this administrative regulation shall provide a clear and readily understandable explanation of the violation, potential adverse health effects, the population at risk, the steps that the public water system is taking to correct the violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous; shall not contain unduly technical language, unduly small print, or other problems that frustrate the purpose of the notice; and, where appropriate, the notice shall be multilingual. Each notice shall include the name and telephone number of the owner, operator or designee of the public water system as a source of additional information concerning the notice.

Section 5. Proof of Notice. (1) How to submit. Public notices required by this administrative regulation shall be submitted to the cabinet. For newspaper advertisements, a copy of the complete page

of the newspaper or newspapers in which the advertisement appeared and the date of its appearance, shall be submitted by the water system. For notices to radio and television media for acute violations, a copy of all material submitted to the radio and television media shall be submitted to the cabinet by the water system, along with an affidavit, signed by the operator or owner of the public water system, stating when and to which radio and television media the notice was given. A copy of notices that are hand delivered, delivered to radio or television media for acute violations, or mailed, shall be mailed to the cabinet by the water system, along with an affidavit signed by the operator or owner of the water system stating that all consumers were notified. Mailing to the cabinet shall take place the same day as hand delivery, delivery to radio or television media, or mailing to the public. If the notice is posted, the owner or operator of the water system shall submit a copy of the notice and an affidavit stating where the notices were placed. All notices to the cabinet shall be addressed to the Division of Water, Drinking Water Branch, Frankfort Office Park, 14 [18] Reilly Road, Frankfort, Kentucky 40601.

(2) Public notification by the cabinet. The cabinet may give the notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements are met.

(3) Failure to submit proof of notice. The cabinet may construe failure to submit proof of notice as evidence that the public water system has failed to notify the public. When the public water system fails to submit proof of notice within thirty (30) days of any requirement for notice, the cabinet may submit the notice to be published, with the cost of publication to be billed to the public water system by the publishing entity. Costs incurred by the cabinet to notify the public, resulting from the failure of the public water system to do so, may be recovered by the cabinet.

Section 6. Mandatory Language for Tier One Violations. Public notice for those contaminants listed in this section shall contain language in addition to the information on potential adverse health effects required by Section 4 of this administrative regulation. The owner or operator of a public water system shall include the language specified below for each contaminant listed in those notices. The following mandatory-health- effects language shall be published intact and may not include inserted material not prescribed by this administrative regulation:

(1) Trichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(2) Carbon tetrachloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(3) 1,2-Dichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(4) Vinyl chloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(5) Benzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(6) 1,1-Dichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to

cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(7) Para-dichlorobenzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, moth balls, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) 1,1,1-Trichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) Fluoride. The U.S. Environmental Protection Agency (EPA) requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of _____ (Public Water Supply shall insert the compliance result which triggered public notice) milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine (9) years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1.0 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine (9) are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting. Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available. For further information contact _____ (Public Water Supply shall insert the name, address and telephone number of a contact person) at your water system.

(10) Total coliforms (to be used when there is a violation of 401 KAR 8:200, Section 2(1), and not a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment of the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than five (5.0) percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty (40) samples/month that have one (1) total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

(11) Fecal Coliforms-E. coli (to be used when there is a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms of E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result to a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water system according to instructions from state or local authorities).

(12) Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 401 KAR 8:150). The United States Environmental

Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

(13) Asbestos. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that asbestos fibers greater than ten (10) micrometers in length are a health concern at certain levels of exposure. Asbestos is a naturally occurring mineral. Most asbestos fibers in drinking water are less than ten (10) micrometers in length and occur in drinking water from natural sources and from corroded asbestos-cement pipes in the distribution system. The major uses of asbestos were in the production of cements, floor tiles, paper products, paint, and caulking; in transportation-related applications; and in the production of textiles and plastics. Asbestos was once a popular insulating and fire retardant material. Inhalation studies have shown that various forms of asbestos have produced lung tumors in laboratory animals. The available information on the risk of developing gastrointestinal tract cancer associated with the ingestion of asbestos from drinking water is limited. Ingestion of intermediate-range chrysotile asbestos fibers greater than ten (10) micrometers in length is associated with causing benign tumors in male rats. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for asbestos at seven (7) million long fibers per liter to reduce the potential risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to asbestos.

(14) Barium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of ground water. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system, and is associated with high blood pressure in laboratory animals such as rats exposed to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below two (2) parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at two (2) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

(15) Cadmium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cadmium is a health concern at certain levels of exposure. Food and the smoking of tobacco are common sources of general exposure. This inorganic metal is a contaminant in the metals used to galvanize pipe. It generally gets into water by corrosion of galvanized pipes or by improper waste disposal. This chemical has been shown to damage the kidney in animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the kidney. EPA has set the drinking water standard for cadmium at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cadmium.

(16) Chromium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chromium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in the ground and is often used in the electroplating of metals. It generally gets into water from runoff from old mining operations and improper waste disposal from plating operations. This chemical has been shown to damage the kidney, nervous system, and the circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels. Some humans who were exposed to high levels of this chemical suffered liver and kidney damage, dermatitis and respiratory problems. EPA has set the drinking water standard for chromium at one-tenth (0.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chromium.

(17) Mercury. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that mercury is a health concern at certain levels of exposure. This inorganic metal is used in electrical equipment and some water pumps. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the kidney of laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for mercury at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to mercury.

(18) Nitrate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from human and/or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly in infants. In most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at ten (10) parts per million (ppm) for nitrate to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrite at one (1) ppm. To allow for the fact that the toxicity of nitrate and nitrite are additive, EPA has also established a standard for the sum of nitrate and nitrite at ten (10) ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

(19) Nitrite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrite poses an acute health concern at certain levels of exposure. This inorganic chemical is used in fertilizers and is found in sewage and wastes from humans and/or farm animals and generally gets into drinking water as a result of those activities. While excessive levels of nitrite in drinking water have not been observed, other sources of nitrite have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused

because nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly. However, in most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 1 part per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate (converted to nitrite in humans) at ten (10) ppm and for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrite.

(20) Selenium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that selenium is a health concern at certain high levels of exposure. Selenium is also an essential nutrient at low levels of exposure. This inorganic chemical is found naturally in food and soils and is used in electronics, photocopy operations, the manufacture of glass, chemicals, drugs, and as a fungicide and a feed additive. In humans, exposure to high levels of selenium over a long period of time has resulted in a number of adverse health effects, including a loss of feeling and control in the arms and legs. EPA has set the drinking water standard for selenium at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to selenium.

(21) Acrylamide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that acrylamide is a health concern at certain levels of exposure. Polymers made from acrylamide are sometimes used to treat water supplies to remove particulate contaminants. Acrylamide has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Sufficiently large doses of acrylamide are known to cause neurological injury. EPA has set the drinking water standard for acrylamide using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of acrylamide in the polymer and the amount of the polymer which may be added to drinking water to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to acrylamide.

(22) Alachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that alachlor is a health concern at certain levels of exposure. This organic chemical is a widely used pesticide. When soil and climatic conditions are favorable, alachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for alachlor at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to alachlor.

(23) Aldicarb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

(24) Aldicarb sulfoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in ground water is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfoxide may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

(25) Aldicarb sulfone. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name aldoxycarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

(26) Atrazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that atrazine is a health concern at certain levels of exposure. This organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to affect offspring of rats and the heart of dogs. EPA has set the drinking water standard for atrazine at 0.003 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to atrazine.

(27) Carbofuran. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbofuran is a health concern at certain levels of exposure. This organic chemical is a pesticide. When soil and climatic conditions are favorable, carbofuran may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the nervous and reproductive systems of laboratory animals such as rats and mice exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the nervous system. Effects on the nervous system are generally rapidly reversible. EPA has set the drinking water standard for carbofuran at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is

considered safe with respect to carbofuran.

(28) Chlordane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlordane is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordane is not very mobile in soils. It usually gets into drinking water after application near water supply intakes or wells. This chemical has been shown to cause to cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for chlordane at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chlordane.

(29) Dibromochloropropane (DBCP). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that DBCP is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, dibromochloropropane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for DBCP at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to DBCP.

(30) o-Dichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that o-dichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent in the production of pesticides and dyes. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and the blood cells of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, nervous system, and circulatory system. EPA has set the drinking water standard for o-dichlorobenzene at six-tenths (0.6) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to o-dichlorobenzene.

(31) cis-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that cis-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

(32) trans-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and the circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for trans-1,2-dichloroethylene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to trans-1,2-dichloroethylene.

(33) 1,2-Dichloropropane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloropropane is a health concern at certain levels of exposure. This organic chemical is used as a solvent and pesticide. When soil and climatic conditions are favorable, 1,2-dichloropropane may get into drinking water by runoff into surface water or by leaching into ground water. It may also get into drinking water through improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for 1,2-dichloropropane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 1,2-dichloropropane.

(34) 2,4-D. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4-D is a health concern at certain levels of exposure. This organic chemical is used as a herbicide and to control algae in reservoirs. When soil and climatic conditions are favorable, 2,4-D may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4-D at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4-D.

(35) Epichlorohydrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that epichlorohydrin is a health concern at certain levels of exposure. Polymers made from epichlorohydrin are sometimes used in the treatment of water supplies as a flocculent to remove particulates. Epichlorohydrin generally gets into drinking water by improper use of these polymers. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for epichlorohydrin using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of epichlorohydrin in the polymer and the amount of the polymer which may be added to drinking water as a flocculent to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to epichlorohydrin.

(36) Ethylbenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined ethylbenzene is a health concern at certain levels of exposure. This

organic chemical is a major component of gasoline. It generally gets into water by improper waste disposal or leaking gasoline tanks. This chemical has been shown to damage the kidney, liver, and nervous system of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for ethylbenzene at seven-tenths (0.7) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to ethylbenzene.

(37) Ethylene dibromide (EDB). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that EDB is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, EDB may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for EDB at 0.00005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to EDB.

(38) Heptachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor at 0.0004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor.

(39) Heptachlor epoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor epoxide is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor epoxide may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor epoxide at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor epoxide.

(40) Lindane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lindane is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, lindane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and immune system of laboratory animals such as rats, mice and dogs exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system and circulatory system. EPA has established the drinking water standard for lindane at 0.0002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to lindane.

(41) Methoxychlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that methoxychlor is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, methoxychlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and reproductive system of laboratory animals such as rats exposed at high levels during their lifetimes. It has also been shown to produce growth retardation in rats. EPA has set the drinking water standard for methoxychlor at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to methoxychlor.

(42) Monochlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that monochlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. EPA has set the drinking water standard for monochlorobenzene at one-tenth (0.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to monochlorobenzene.

(43) Polychlorinated biphenyls (PCBs). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that polychlorinated biphenyls (PCBs) are a health concern at certain levels of exposure. These organic chemicals were once widely used in electrical transformers and other industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical industrial equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for PCBs at 0.0005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to PCBs.

(44) Pentachlorophenol. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals such as rats exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the liver and kidneys. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol.

(45) Styrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that styrene is a health concern at certain levels of exposure. This organic chemical is commonly used to make plastics and is sometimes a component of resins used for drinking water treatment. Styrene may get into drinking water from improper waste disposal. This chemical has been shown to damage the liver and nervous system in laboratory animals when exposed at high levels during their lifetimes. EPA has set the drinking water standard for styrene at one-tenth (0.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to styrene.

(46) Tetrachloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that tetrachloroethylene is a health concern at certain levels of exposure. This organic chemical has been a popular solvent, particularly for dry cleaning. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for tetrachloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to tetrachloroethylene.

(47) Toluene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toluene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and in the manufacture of gasoline for airplanes. It generally gets into water by improper waste disposal or leaking underground storage tanks. This chemical has been shown to damage the kidney, nervous system, and circulatory system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, kidney and nervous system. EPA has set the drinking water standard for toluene at 1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to toluene.

(48) Toxaphene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toxaphene is a health concern at certain levels of exposure. This organic chemical was once a pesticide widely used on cotton, corn, soybeans, pineapples and other crops. When soil and climatic conditions are favorable, toxaphene may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for toxaphene at 0.003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toxaphene.

(49) 2,4,5-TP. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4,5-TP is a health concern at certain levels of exposure. This organic chemical is used as a herbicide. When soil and climatic conditions are favorable, 2,4,5-TP may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4,5-TP at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4,5-TP.

(50) Xylenes. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that xylene is a health concern at certain levels of exposure. This organic chemical is used in the manufacture of gasoline for airplanes and as a solvent for pesticides, and as a cleaner and degreaser of metals. It usually gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for xylene at ten (10) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to xylene.

(51) Antimony. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

(52) Beryllium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

(53) Cyanide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at two-tenths

(0.2) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

(54) Nickel. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nickel poses a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electroplating, stainless steel and alloy products. It generally gets into water from mining and refining operations. This chemical has been shown to damage the heart and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard at one-tenth (0.1) parts per million (ppm) for nickel to protect against the risk of these adverse effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to nickel.

(55) Thallium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

(56) Benzo(a)pyrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined benzo(a)pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common sources of general exposure. The major source of benzo(a)pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo(a)pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo(a)pyrene.

(57) Dalapon. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at two-tenths (0.2) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

(58) Dichloromethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

(59) Di(2-ethylhexyl)adipate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)-adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

(60) Di(2-ethylhexyl)phthalate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

(61) Dinoseb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

(62) Diquat. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

(63) Endothall. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

(64) Endrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(65) Glyphosate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at seven-tenths (0.7) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

(66) Hexachlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

(67) Hexachlorocyclopentadiene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

(68) Oxamyl. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

(69) Picloram. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into groundwater has a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

(70) Simazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or run off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

(71) 1,2,4-Trichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

(72) 1,1,2-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

(73) 2,3,7,8-RCDD (Dioxin). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

(74) Lead. The United States Environmental Protection Agency

(EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than ninety (90) percent of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of fifteen (15) ppb of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

(75) Copper. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a corrosion by-product occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below one and three-tenths (1.3) parts per million (ppm) in more than ninety (90) percent of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation affects approximately 809 public water systems. This number may vary from month to month.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation incorporate mandatory language for public notification in case of violations of maximum contaminant levels for an additional 63 contaminants. In addition, nitrite has been added as an acute tier one violation. This amendment will not increase or decrease costs if no violation occurs. However, the field of contaminants which may trigger a violation is substantially expanded. If a violation occurs, public water systems would be required to notify the public and would incur the costs of doing so through newspaper advertisements or publishing fliers or posters for notifying the public. These costs could vary depending on the size of the public water system, the size of the newspaper in which the advertising is purchased, and the number of customers a public water system may need to notify.

1. First year: Notification requirements will be on-going. No costs will be incurred if no violation occurs.

2. Continuing costs or savings: Costs will be incurred if a violation occurs and will continue to occur for as long as the violation exists.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: Public water systems are required to submit copies of public notification to the Cabinet. The amendment to this regulation does not change that but does expand the field of possible contaminants.

(2) Effects on the promulgating administrative body: The amendments to this regulation will have no effect on the promulgating administrative body except to expand the field of contaminants which public water systems will be required to notify the public about and submit such notification to the Cabinet.

(a) Direct and indirect costs or savings: The amendments to this regulation are unlikely to have any measurable direct or indirect costs or savings to the promulgating administrative body. The Cabinet considers it unlikely that most of the expanded list of contaminants will be found above the maximum contaminant level in more than a few systems, if any.

1. First year: No measurable cost or savings.

2. Continuing costs or savings: No continuing cost or savings.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The reporting and

paperwork requirements of this regulation are unchanged by the amendments.

(3) Assessment of anticipated effect on state and local revenues: State and local revenues are not expected to be affected by this regulation, although a public water system owned by a local government which has to notify the public, could be indirectly affected by this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation stipulates language developed by the Environmental Protection Agency as mandatory language for Public Notification. No other method would comply with this Federal requirement.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or other policy, conflicts with, or duplicates this regulation, although 401 KAR 8:020 provides for "boil water advisories" and "consumer advisories" which may overlap this regulation. These advisories can be initiated at any time by the public water system or the Cabinet when information needs to be conveyed to consumers. These advisories may or may not fulfill the requirements of this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The provisions of this regulation have been tiered to take into consideration the severity of the violation and the circumstances of the Public Water System.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: This regulation requires public notification when public water systems fail to comply with 401 KAR Chapter 8. No costs would be incurred if the water system stays in compliance. However, if public notification is necessary, costs could be incurred. These costs would ordinarily be passed on to consumers of the water, but a local government which owns a public water system could choose to absorb these costs. Public Notification costs can vary depending on the type notice, the size of the public water system, and the number of customers the water system has.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.32 as amended at 56 Federal Register 3587(1991), 56 Federal Register 26548(1991), 56 Federal Register 30279(1991) and 57 Federal Register 31843(1992) establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. 401 KAR 8:070 Section 6 prescribes the mandatory language for use in public notifications which are required elsewhere in this regulation.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 141.32 prescribes mandatory language for use with public notification required by the regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:100. Design, construction and approval of [~~new or modified~~] facilities.

RELATES TO: KRS Chapter 224; 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572, 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation sets out design plan requirements for the construction of new and expanded facilities that deliver pure water for public or semipublic use, as well as stipulating certain reporting requirements and requiring modifications to existing facilities for certain line replacements, and feeding granular activated carbon.

Section 1. Plans and Specifications. (1) Plans to be submitted. Before a supplier or potential supplier of water may enter into a financial commitment for or initiate construction of a new public water system, or increase the capacity of an existing public water system, he shall submit the preliminary plans to the cabinet. An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year flood plain.

(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant along with the fee required by 401 KAR 8:050, Section 1(1):

(a) The names of the applicant and the owner of the plant;

(b) A United States Geological Survey quadrangle map which shows the location of the proposed facility;

(c) The proposed source of water and quantity available, with the

location of the intake or wellhead identified by latitude and longitude in degrees, minutes and seconds;

(d) An analysis of the water from the proposed source, which covers all regulated parameters, performed by a laboratory certified by the cabinet or its authorized agent;

(e) A description of the proposed facility, including size, flow rate through filters, settling basin size, and other general criteria; and

(f) An operation plan, including anticipated load, hours of operation, area served and the name of the plant operator.

(3) Preliminary plans approval. Upon receipt and review of the preliminary plans, as set forth in subsection (1) of this section, the cabinet shall either approve the preliminary plans or return them to the supplier of water for revision. Approval of the preliminary plans signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall comply with the approved preliminary plans. Any change in the final design from the concept set forth in the preliminary plans shall be approved prior to its incorporation in the final plans and specifications.

(4) Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.

(5) Final plans and specifications for water treatment plants and distribution facilities.

(a) Plans for the construction or modification of public water systems shall be submitted by the water system or shall be accompanied by a letter from the water system confirming that it has reviewed the plans, accepts the design and can and will provide water service to the project. Public water systems which purchase water from another public water system, shall also submit a letter from the seller of water for all construction or modification projects if: such project will result in exceeding eighty-five (85) percent of the purchasers current purchase contract; or such project could result in a pressure reduction below thirty-five (35) pounds per square inch in either the purchaser's or the seller's system; or, such project will result in a demand for water by the purchaser in excess of a 10,000 gallon per day increase. This requirement may be waived by the cabinet if the purchaser shows that a reasonable attempt to obtain the letter has been made and the seller of water fails to provide the required letter. In no event will this provision be the sole justification for rejection of the proposed project. The intent is to alert the seller and the purchaser that they are approaching their water purchase contract limitations and the state standards on minimum water pressure.

(b) Plans and specifications for all public water systems shall be prepared and submitted to the cabinet by a professional engineer registered in Kentucky, and shall bear the engineer's [~~his~~] seal. The seal of a professional engineer is not required on plans and specifications for semipublic water supplies, or for public water supply projects in which the expenditure for the completed project shall not exceed $2,000. The construction or installation of any new facilities or works or the alteration or reconstruction of any existing facilities or works, in any public or semipublic water system, shall not begin until four (4) copies of the plans and specifications, or any changes thereto, together with design data as may be required for proper review of the plans, have been submitted to the cabinet and have been approved by the cabinet in writing. A complete package, including plans, specifications, necessary fees, letters and other information, shall be submitted in such form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet. The front page of the plans shall contain the name of the water supply, its ownership, location by city and county, and the name of the person preparing the plans.

(c) The cabinet's review of plans shall be limited to sanitary features of design and other features of public health significance and shall not include an examination of structural, mechanical or electrical design or economic factors.

(d) The plans shall be drawn to scale and accompanied by proper specifications, so as to permit a comprehensive engineering review, and shall include, but not be limited to, the following:

1. If treatment facilities are involved, chemical analyses of the proposed raw water source or sources shall be performed and evaluated before final approval is granted;

2. A plan and sectional view with all necessary dimensions of the water treatment facilities;

3. A piping diagram showing all appurtenances, including treatment facilities, in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system; and

4. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.

5. A capacity to feed activated carbon shall be a part of the design for a new community or nontransient noncommunity surface water system.

6. A plan for a water line that would propose a section of line be laid within a 200 foot radius of an underground storage tank as defined in KRS 224.60-100 or a petroleum storage tank as defined in KRS 224.60-115, shall provide that all water lines within the 200 foot radius shall be ductile iron pipe or other metal pipe approved by the cabinet. Any future replacement of an existing water line within a 200 foot radius of a storage tank, whether or not plans are submitted to the cabinet, shall also meet this requirement.

(6) Approval of final plans. If approved, one (1) set of plans and specifications stamped "approved" will be returned to the engineer or person who prepared them and one set will be returned to the water supply.

(7) Construction.

(a) During construction, a set of approved plans and specifications shall be available at the job site at all times. All work shall be performed in accordance with the approved plans and specifications.

(b) If the cabinet's representative observes work being performed in a manner which does not conform to the approved plans and specifications, the cabinet shall notify the owner in writing.

(8) Final approval of facility. Upon completion of construction, the person who presented the plans shall certify in writing that the project has been completed in accordance with the "approved" plans and specifications. The public water supply shall operate the facility consistent with the approved plans and specifications. Any proposed change to the approved plan shall be submitted to the cabinet for approval. The public water supply shall not implement any change to the approved plan without the prior written approval of the cabinet.

(9) Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(10) Modifications and extension of service. The cabinet may refuse to approve modifications of a public water system or an extension of service to one (1) or more customers where such modification or extension of service may result in the water system's inability to supply consistent water service in compliance with 401 KAR 8:010 through 8:060 inclusive.

(11) [~~(10)~~] All plans and specifications submitted pursuant to this regulation shall be consistent with "Recommended Standards for Water Works", "General Design Criteria for Surface and Groundwater Supplies", and "Water Policy Memorandum Number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges", which are incorporated by reference in Section 4 [~~2~~] of this regulation.

Section 2. Treatment Techniques for New and Existing Systems.

(1) General requirements. The requirements of this section constitute primary drinking water regulations. These administrative regulations establish treatment techniques in lieu of maximum contaminant levels for specified contaminants.

(2) Treatment techniques for acrylamide and epichlorohydrin. Each public water system shall certify annually in writing to the cabinet, using third party or manufacturer's certification, that when acrylamide and epichlorohydrin are used in drinking water systems, the combination or product of dose and monomer level does not exceed the levels specified as follows:

Acrylamide = 0.05% dosed at one (1) ppm (or equivalent);

Epichlorohydrin = 0.01% dosed at twenty (20) ppm (or equivalent).

Certifications may rely on manufacturers or third parties, as approved by the cabinet.

Section 3. All existing community and nontransient noncommunity water systems using surface water as a source shall, by January 1, 1998, submit to the cabinet for approval plans to establish the capacity to feed activated granular carbon to the treatment system. Within twelve (12) months of the approval of the plans, the water system shall certify in writing to the cabinet that the approved plan has been implemented.

Section 4. [2.] The following documents are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for state holidays, at the Division of Water, 14 [18] Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers "Recommended Standards for Water Works," 1992 [1987], published by and available from Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", July 1990, which is published by and may be obtained from the Division of Water; and

(3) "Water Policy Memorandum number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes within Five Miles Downstream from Wastewater Discharges", 1984, which is published by and may be obtained from the Division of Water.

[Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation will affect approximately 918 public and semipublic water systems. This number can vary from month to month.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation will require public water systems, when submitting plans for new facilities, to allow for the need to provide activated carbon as a treatment technique, for existing facilities to submit plans and implement a means of using activated carbon as a treatment technique, to certify to the Cabinet if certain chemical treatments are used to treat water, and to use ductile iron pipe for water lines within 200 feet of underground storage tanks. Proposed changes to approved plans must be submitted for approval. An implicit right to deny modifications to existing systems is made explicit. Costs for using activated carbon as a filtration media are estimated to be $2,000 per year it is in use.

1. First year: Submission of plans for approval is a one time activity unless plans are changed. Submission of proposed changes is required by this regulation but always has been if the change would modify operation of the water system. Costs can vary with the size and complexity of the project. Plans for the introduction of activated carbon will create some small cost. The amendments to this regulation are not expected to increase costs significantly. However, the use of ductile iron pipe will double the cost of pipe material over PVC pipe for the length of pipe needed.

2. Continuing costs or savings: If a public water system uses acrylamide or epichlorohydrin in its treatment process, it must certify to the Cabinet that certain criteria are met. These certifications may be based on manufacturer's specifications and standards.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors increase or decrease costs.

(b) Reporting and paperwork requirements: The Cabinet will have to maintain the annual certifications made by public water systems using acrylamide or epichlorohydrin in their treatment process. The Cabinet will also need to approve plans for the introduction of activated carbon.

(2) Effects on the promulgating administrative body: The amendments to this regulation will require the Cabinet to maintain the annual certifications for acrylamide and epichlorohydrin. The ability to feed activated carbon is one additional element to be included in new water system plans, and additional plans will have to be reviewed for existing water treatment plants as they develop this ability.

(a) Direct and indirect costs or savings: Some minor record maintenance costs are possible. However, the Cabinet does not know how to gauge these since it is unknown how many water systems may choose to use acrylamide or epichlorohydrin in their treatment process. Also, Cabinet personnel will need to review plans to introduce activated carbon in existing systems.

1. First year: No other direct or indirect costs or savings.

2. Continuing costs or savings: No other continuing costs or savings.

3. Additional factors increasing or decreasing costs: No other factors affecting costs.

(b) Reporting and paperwork requirements: The Cabinet will be required to maintain new certifications relating to two additives and to retain plans for the introduction of activated carbon. It is expected that the new language for submitting proposed changes to approved plans will increase the number of these plan changes which are submitted. No other new paperwork or recordkeeping will be required.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Cabinet has given consideration to moving to a more formal permit procedure. However, at this time the plans approval process is well established and understood. This unit seems to be the best place to allow water systems to certify their additives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts with, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation has been tiered to reflect the types and sizes of public water systems as well as the types of projects involved.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will require reports to the Cabinet if certain chemicals are used in the treatment process. It also will require public water systems to provide a means of using activated carbon in the treatment process and use ductile iron pipe for lines within 200 yards of an underground storage tank. While public water systems usually would pass costs for these activities through to the consumer, a local government which owns and operates a public water system could elect to absorb some or all of these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.110 and 40 CFR 141.111 created at 56 Federal Register 3594 January 30, 1991 establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. This regulation sets forth certain reporting requirements for public water systems using certain treatment techniques for water. In addition, this regulation will make the ability to use activated carbon as a treatment technique an element in the design of certain public water systems as well as require all public water systems using surface water to submit plans for feeding activated carbon and to implement those plans within one year. This regulation will also require water lines within 200 yds. of an underground storage tank to be constructed of ductile iron or other metal approved by the cabinet. Also, public water systems must submit proposed changes to approved plans for approval.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations set forth certain reporting requirements for public water systems using certain treatment techniques for water.

4 .Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The cabinet believes that, because of the heightened awareness of possible chemical contamination, water systems should be designed in a way to allow for easy treatment of most chemical contaminants. In addition, there have been numerous cases of PVC pipe being permeated by contaminants from leaking underground storage tanks. Therefore, the cabinet believes that requiring metal pipes within 200 yards of such tanks to be prudent. The requirement to submit proposed changes to approved plans for approval is a housekeeping change to clarify an existing requirement.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Parts 141 and 142 (1993), [~~as amended at 54 Federal Register 27,526 (1989),~~] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation sets out requirements for the disinfection and filtration of drinking water in public water systems using surface water or groundwater under the direct influence of surface water. These requirements shall serve as treatment techniques in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, as well as an MCL for turbidity.

Section 1. Disinfection. All public and semipublic water systems shall provide disinfection.

(1) Public water systems using groundwater or surface water as a source. Supplies which use chlorine shall use continuous automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) [~~at all points~~] throughout the distribution system measured as described in subsection (2) of this section. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. For those supplies using chlorine, free chlorine residuals shall be checked daily at representative points throughout the system and shall be reported monthly pursuant to 401 KAR 8:020, Section 2(7)(a). Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, may be acceptable to the cabinet but shall be specifically approved by the cabinet on a case-by-case basis. If chloramination is used, a minimum combined residual of five-tenths (0.5) milligrams per liter (or ppm) shall be provided throughout the distribution system. If chlorine dioxide is used, the concentration of combined oxidants (chlorine dioxide, chlorate and chlorite) shall not exceed one and zero-tenths (1.0) milligrams per liter (or ppm) in the water delivered to the distribution system.

(2) All public water systems using surface water as a source, or groundwater under the direct influence of surface water, shall provide disinfection treatment as follows:

(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least ninety-nine and nine-tenths (99.9) percent (3-log) inactivation or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation or removal of viruses as determined by the cabinet, consistent with the "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" incorporated by reference in Section 5 of this administrative regulation.

(b) The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1)(e) of this administrative regulation shall not be less than required by subsection (1) of this section for more than four (4) hours.

(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1)(e) of this administrative regulation, shall not be less than two-tenths (0.2) milligrams per liter (or ppm) in more than five (5) percent of the samples each month, for two (2) consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC), as specified in Section 3(1)(c) of this regulation, is deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement. Thus the value "V" in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances that the residual disinfectant concentration is measured;

b = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances that the residual disinfectant concentration is measured but does not measure at least two-tenths (0.2) milligrams per liter or ppm or the equivalent [~~not detected~~] and no HPC is measured;

d = number of instances that [~~no~~] residual disinfectant concentration is below two-tenths (0.2) milligrams per liter [~~detected~~] and where the HPC is greater than 500/ml; and

e = number of instances that the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(d) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1)(c) of this administrative regulation and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply.

(e) The cabinet may, through its own or independent testing, determine that residual disinfection is not present throughout the distribution system, take action necessary to correct the problem and, if necessary, notify the public in accordance with 401 KAR 8:020, Section 2(9).

(3) Variances or exemptions shall not be granted for subsection (2) of this section.

Section 2. Filtration. All public water systems using a surface water source and all ground water systems under the direct influence of surface water shall establish filtration systems. The design for such systems shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following [~~by June 29, 1993~~]:

(1) Conventional filtration treatment or direct filtration:

(a) If a public water system uses conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this administrative regulation, except that if the cabinet determines that the system is capable of achieving at least ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts at some turbidity level higher than five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, the cabinet may substitute this higher turbidity limit for that system. However, the cabinet shall not approve a turbidity limit that allows more than one (1) NTU in more than five (5) percent of the samples taken each month measured as specified in Section 3(1)(d) of this administrative regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this administrative regulation.

(2) Slow sand filtration.

(a) If a public water system uses slow sand filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this administrative regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for that system.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this administrative regulation.

(3) Diatomaceous earth filtration.

(a) If a public water system uses diatomaceous earth filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this administrative regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1)(d) of this administrative regulation.

(4) Other filtration technologies. A public water system may use a filtration technology not listed in subsections (1) through (3) of this section if it demonstrates to the cabinet, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of this administrative regulation, consistently achieves ninety-nine and

nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. If a system makes this demonstration, the requirements of subsection (2) of this section shall apply.

(5) Variances or exemptions shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. The analytical methods specified in this subsection, or otherwise approved by the cabinet, shall be used to demonstrate compliance with this administrative regulation. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations shall be conducted by a party approved by the cabinet. Measurements for total coliforms, fecal coliforms, and HPC shall be conducted by a laboratory certified by the cabinet or EPA to do the analyses. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms, a laboratory certified for total coliform analysis by EPA or the cabinet shall be deemed certified for HPC and fecal coliform analysis. The following procedures shall be performed in accordance with the respective methods set forth below:

(a) Fecal coliform concentration - Method 908C (Fecal Coliform MPN Procedures), pp. 878-880, Method 908D (Estimation of Bacterial Density), pp. 880-882, or Method 909C (Fecal Coliform Membrane Filter Procedure), pp. 896-898, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(b) Total coliform concentration - Method 908A (Standard Total Coliform Multiple - Tube (MPN) Tests), pp. 872-876, Method 908B (Application of Tests to Routine Examinations), pp. 876-878, Method 908D (Estimation of Bacterial Density), pp. 880-882, Method 909A (Standard Total Coliform Membrane Filter Procedure), pp. 887-894, or Method 909B (Delayed - Incubation Total Coliform Procedure), pp. 894-896, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition; Minimal Medium ONPG-MUG Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water; Comparison with the Standard Multiple Tube Fermentation Method" (Edberg et al). Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Volume 54, p. 3197, December 1988). (Note: the Minimal Medium ONPG- MUG Test is sometimes referred to as the Autoanalysis Colilert System). Systems may use a five (5) tube test or a ten (10) tube test.

(c) Heterotrophic Plate Count - Method 907A (Pour Plate Method), pp. 864-866, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(d) Turbidity - Method 214A (Nephelometric Method - Nephelometric Turbidity Units), pp. 134-136, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985 American Public Health Association et al, 16th edition.

(e) Residual disinfectant concentration - residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) shall be measured by Method 408C (Amperometric Titration Method), pp. 303-306, Method 408D (DPD Ferrous Titrimetric Method), pp. 306-309, Method 408E (DPD Colorimetric Method), pp. 309-310, or Method 408F (Leuco Crystal Violet Method), pp. 310-313, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by DPD colorimetric test kits if approved by the cabinet. Residual disinfectant concentrations for ozone shall be measured by the Indigo Method published in the 17th edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association et al; the Iodometric Method in the 16th edition shall not be used. Other automated methods which are calibrated in reference to the results obtained by the Indigo method on a regular basis may be approved by the cabinet. Residual disinfectant concentrations for chlorine dioxide shall be measured by Method 410B (Amperometric Method) or Method 410C (DPD Method), pp. 322-324, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(f) Temperature - Method 212 (Temperature) pp. 126-127, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(g) pH - Method 423 (pH Value), pp. 429-437, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition.

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with paragraph (a) of this subsection beginning July 1, 1992, and with paragraph (b) of this subsection beginning January 1, 1993, or when filtration is installed, whichever is later.

(a) Turbidity measurements shall be performed by public water systems on representative samples of the system's filtered water at least every four (4) hours that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the cabinet. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be recorded. The schedule shall reflect monitoring at least every four (4) hours the system serves water to the public. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing, that less frequent monitoring is sufficient to indicate effective filtration performance. If a system serves 500 or fewer persons, the cabinet may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines, in writing, that less frequent monitoring is sufficient to indicate effective filtration performance.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by public water systems continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

System Size by Population	Samples/Day
less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

The day's samples shall not be taken at the same time. The sampling intervals shall be subject to cabinet review and approval. If the residual disinfectant concentration falls below the requirements of Section 1(1) of this regulation in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 1(1) of this administrative regulation.

(c) The residual disinfectant concentration shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which uses both a surface water source, or a groundwater source under direct

influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in subsection (1)(c) of this section, may be measured in lieu of residual disinfectant concentration.

(d) If the cabinet determines in writing, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by subsection (1)(c) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines. (1) Disinfection of water lines. A water distribution system, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. A water distribution system shall disinfect with chlorine or chlorine compounds, in amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in subsection (2) of this section are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.

(2) Water distribution systems shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half (1/2) mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.

(3) If emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. If a public water system suspends bacteriological sampling, it shall maintain records of flushing and chlorine residuals for one (1) year, and conduct bacteriological tests immediately after normal disinfectant residuals are detected after returning the line to service. Records of results shall be submitted to the cabinet and shall be maintained for one (1) year. In cases of loss of pressure below twenty (20) pounds per square inch or breaks or ruptures requiring more than eight (8) hours to repair, the public water system shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1) single family residence. Community and nontransient noncommunity public water systems shall maintain [~~provide~~] a log of all breaks or ruptures which includes the date and location of the break or rupture, the time it was discovered, the population affected, the length of time required to repair the break or rupture, the date and time disinfectant residuals are detected and the date and time bacteriological samples are taken. The log shall be available for inspection by [~~submitted to~~] the cabinet [~~monthly with the monthly operating report required by 401 KAR 8:020, Section 2(7)(a)~~].

Section 5. Incorporation by Reference. The following items are incorporated by reference and are available for public inspection and copying, subject to copyright law, between the hours of 8 a.m. and 4:30 p.m. eastern standard time, Monday through Friday, at the Division of Water, 14 [~~18~~] Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition 1985, and for the purposes of 401 KAR 8:150, Section 3(1)(e), the 17th edition, 1989, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia Coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Minimal Medium ONPG-MUG Method) (Edgerg et al), Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Applied and Environmental Microbiology, Volume 54, p. 3197, December, 1988), which may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado 80235.

(3) "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" October, 1989, as published by the United States Environmental Protection Agency, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water, Washington, D.C., and available from the American Water Works Association, Management Services, 6666 West Quincy Avenue, Denver, Colorado 80235, (303) 794-7711.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation affects approximately 918 public and semipublic water systems. This number may vary from month to month.

(a) Direct and indirect costs or savings to those affected: Two of the amendments to this regulation clarify that the disinfection requirement throughout the distribution system is 0.2 milligrams per liter in 90% of the samples, and change the requirement that a log of line breaks must be submitted to the Cabinet to a requirement that the log be maintained for inspection. The first change clarifies what has been required and the second adopts what has in fact been the practice. Therefore, there should be no cost or savings associated with these changes. A third amendment provides a method for Cabinet personnel to take appropriate action when disinfectant residuals are not present in the distribution system. This will not result in a cost or savings to the system since a residual disinfectant is already required.

1. First year: No cost or savings is anticipated.

2. Continuing costs or savings: No continuing cost or savings is anticipated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting requirements are reduced since the log of line breaks may now simply be maintained rather than submitted to the Cabinet. In fact, this has been the practice anyway for most public water systems.

(2) Effects on the promulgating administrative body: The amendment to this regulation will relieve the Cabinet of having to place logs of line breaks in facility files. In fact, few of these logs have been received.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are expected.

1. First year: No costs or savings are expected.

2. Continuing costs or savings: No costs or savings are expected.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The Cabinet will be relieved of filing logs of line breaks in the facility file.

(3) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the amendment to this regulation is to not amend it. This alternative was rejected because it would result in confusion over the requirement for disinfection in the distribution systems, and would have maintained a requirement in the regulation to submit logs of line breaks monthly, a requirement that is not being followed and which the Cabinet believes is unnecessary at this time. Cabinet field staff believe the final amendment is necessary to clarify their options when a residual disinfectant is not found during normal inspections.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts with, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation takes into consideration the type of water source used by a system as well as the filtration technique.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendments to this regulation are basically housekeeping in nature. A paper savings may be achieved by the amendment which changes the requirement to submit a log of line breaks to the Cabinet, to a requirement to maintain the log. However, since few of these logs are being submitted, this is unlikely. Any costs or savings from this regulation would likely be passed to the consumer of water, although a local government which owns a public water system could elect to absorb any costs or savings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2.State compliance standards. The amendments to this regulation are housekeeping only and relate to state requirements.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no Federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:200. Microbiological [~~and turbidity~~] monitoring.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 141 (1993), [~~as amended at 54 FR 27,562 (1989), 56 FR 642 (1991),~~] 56 FR 1557 (1991), 42 USCA 300f, 300g, 300h, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~the rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This administrative regulation sets out a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This administrative regulation also specifies

requirements if tests show maximum contaminant levels have been exceeded[~~, as well as requirements for monitoring turbidity~~].

Section 1. All suppliers of water operating a public or semipublic water system, including suppliers operating those systems which provide water purchased from another system, shall meet the requirements of this administrative regulation.

(1) Routine monitoring for total coliform bacteria. A public water system shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. A public water system shall submit the written sample siting plan to the cabinet in a manner prescribed by the cabinet and obtain the cabinet's approval of the plan. The plan shall contain the following elements:

(a) A complete name, address, city and zip code for each sample site. If a post office box number or rural route number is used, the highway number, rural route number or other information adequate to locate the sampling site shall be included.

(b) The site shall be identified as residential, commercial, industrial, educational, or some other specific type of sampling location.

(c) A map shall be submitted with the siting plan showing the public water system's distribution system and the location of all proposed sites. A duplicate map shall be maintained by the public water system. These maps shall be prepared on Kentucky county maps, scale: 1:62,500 (1 inch = 1 mile) or on city maps. These maps may be obtained from the Kentucky Transportation Cabinet, Map Sales, 419 Ann Street, Frankfort, Kentucky 40622. The cabinet may waive this requirement in writing for systems with less than five (5) service connections or which serve a population of less than 500 people.

(2) The monitoring frequency for total coliforms for public water systems shall be based on the population served by the system as follows:

TABLE 1
TOTAL COLIFORM SAMPLING REQUIREMENTS
BASED ON POPULATION SERVED

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	59,001- 70,000	70
2,501 - 3,300	3	70,001 - 83,000	80
3,301 - 4,100	4	83,001 - 96,000	90
4,101 - 4,900	5	96,001 - 130,000	100
4,901 - 5,800	6	130,001 - 220,000	120
5,801 - 6,700	7	220,001 - 320,000	150
6,701 - 7,600	8	320,001 - 450,000	180
7,601 - 8,500	9	450,001 - 600,000	210
8,501 - 12,900	10	600,001 - 780,000	240
12,901 - 17,200	15	780,001 - 970,000	270
17,201 - 21,500	20	970,001 - 1,230,000	300
21,501 - 25,000	25	1,230,001 - 1,520,000	330
25,001 - 33,000	30	1,520,001 - 1,850,000	360
33,001 - 41,000	40	1,850,001 - 2,270,000	390
41,001 - 50,000	50	2,270,001 - 3,020,000	420
50,001 - 59,000	60	3,020,001 - 3,960,000	450
		3,960,001 or more	480

(3) Population-served calculation. For purposes of determining the population served, the applicable method below shall be used:

(a) When the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used; or

(b) When no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, whichever is greater.

(4) Semipublic systems. Suppliers of water for semipublic water systems shall cause samples to be tested, for the purpose of determining the presence or absence coliforms, at least twice per month. If coliforms are present, appropriate repeat samples shall be taken.

(5) Sampling schedule. Each public and semipublic water system shall take routine samples to determine the presence or absence of coliforms. No more than half of the samples shall be taken in one (1) week. Results of the analyses of the samples shall be submitted to the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth day falls on a Saturday, Sunday or holiday the results shall be submitted on the following working day. A noncommunity water system shall sample for total coliform bacteria per 100 milliliters twice each month of operation. Seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by the sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(6) Forwarding samples. The cabinet shall, upon request, notify a water supplier as to those commercial or state laboratories, certified in accordance with 401 KAR 8:040, to which samples may be sent for determining the presence or absence of coliforms. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in bottles prepared and sterilized in accordance with "Standard Methods". When the sample is collected, the disinfectant residual shall be determined and recorded on the form provided by the laboratory with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid. The disinfecting agent shall be removed from the sample at the time of its collection. [~~A distributor of water collecting bacteriological samples for analysis in its own certified laboratory may use containers other than bottles, if this practice is approved in writing by the cabinet.~~]

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation. Repeat samples taken pursuant to subsection (9)(a) of this section are not special purpose samples, and shall be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation.

(9) Repeat monitoring.

(a) If a routine sample is total coliform- positive, the public water system shall collect a set of repeat samples within twenty-four (24) hours of being notified of the positive result. The system shall collect at least three (3) repeat samples for each total coliform-positive sample found. The cabinet may extend the twenty-four (24) hour limit on a case-by-case basis if the system demonstrates that it has a logistical problem in collecting the repeat samples within twenty-four (24) hours that is beyond its control. If an extension is granted, the cabinet shall specify how much time the system has to collect the repeat samples.

(b) The public water system shall collect at least one (1) repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one (1) repeat sample at a tap within five (5) service connections upstream and at least one (1) repeat sample at a tap within five (5) service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one (1) away from the end of the distribution system, the cabinet may waive the requirement to collect

a repeat sample upstream or downstream of the original sampling site, but a total of three (3) repeat samples shall be collected.

(c) The public water system shall collect all repeat samples on the same day.

(d) If one (1) or more repeat samples in the set is total coliform-positive, the public water system shall collect an additional set of repeat samples in a manner specified in paragraphs (a), (b), and (c) of this subsection. The public water system shall collect the additional samples within twenty-four (24) hours of being notified of the positive result, unless the cabinet extends the limit as provided in paragraph (a) of this subsection. The public water system shall repeat this process until either total coliforms are not detected in one (1) complete set of repeat samples or the system determines that the MCL for total coliforms set forth in Section 2 of this administrative regulation has been exceeded and notifies the cabinet, and the public, pursuant to 401 KAR 8:070. The cabinet may require further testing until all samples are total coliform-negative.

(10) If a system collecting fewer than five (5) routine samples per month has one (1) or more total coliform-positive samples and the cabinet does not invalidate the sample pursuant to subsection (13) of this section, the public water system shall collect at least five (5) routine samples during the next month the system provides water to the public.

(11) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample from within five (5) adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample as a repeat sample instead of a routine sample.

(12) Results of routine and repeat samples not invalidated by the cabinet shall be included in determining compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation.

(13) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection shall not count towards meeting the minimum monitoring requirements of this section.

(a) The cabinet may invalidate a total coliform-positive sample only if the conditions of clause 1, 2, or 3 of this subparagraph are met.

1. The laboratory establishes to the satisfaction of the cabinet that improper sample analysis caused the total coliform- positive result.

2. The cabinet, on the basis of the results of repeat samples collected as required by subsection (9) of this section, determines in writing that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The cabinet shall not invalidate a sample on the basis of repeat sample results unless every repeat sample collected at the same tap as the original total coliform-positive sample is total coliform-positive and every repeat sample collected within five (5) service connections of the original tap is total coliform- negative. The cabinet shall not invalidate a total coliform-positive sample on the basis of repeat samples if every repeat sample is total coliform-negative, or if the public water system has only one (1) service connection.

3. The cabinet has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. A decision made by the cabinet to this effect shall be in writing and signed by the Director of the Division of Water upon the written recommendation of the Manager of the Drinking Water Branch. The written decision shall be submitted to the U.S. Environmental Protection Agency and shall be available to the public. The written decision shall state the specific cause of the total coliform-positive sample and shall state what action the public water system has taken, or will take, to correct the problem. The public water system shall, regardless of the cabinet action taken under this clause, take the repeat samples required under subsection (9) of this section. The cabinet shall not invalidate a total coliform-positive sample solely on the grounds that each repeat sample is total coliform- negative.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence- Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of the interference, the public water system shall collect another sample from the same location as the original sample, within twenty-four (24) hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system shall continue to resample within twenty-four (24) hours and have the samples analyzed until it obtains a valid result. The cabinet may waive the twenty-four (24) hour time limit on a case-by-case basis.

(14) Sanitary surveys.

(a) A public water system which does not collect five (5) or more routine samples per month shall undergo an initial sanitary survey by June 29, 1994, if it is a community public water system, and June 29, 1999, if it is a noncommunity water system. Thereafter, the system shall undergo a sanitary survey at least once every five (5) years except that a noncommunity water system using only disinfected groundwater not under the influence of surface water, shall undergo a sanitary survey at least once every ten (10) years. The cabinet shall review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(b) Information relating to a source of contamination within a delineated wellhead protection area, which is collected in the course of developing and implementing a U.S. Environmental Protection Agency approved wellhead protection program, may be considered in conducting a sanitary survey of a public water system using groundwater if the information was collected since the last time the public water system was subject to a sanitary survey.

(c) Sanitary surveys shall be performed by the cabinet or an agent approved by the cabinet. Public water systems are responsible for ensuring that required sanitary surveys take place.

(15) Fecal-coliforms - Escherichia coli (E. coli) testing.

(a) If a routine or repeat sample is total coliform-positive, the public water system shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the public water system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system shall notify the cabinet by the end of the day the system is notified of the test result pursuant to 401 KAR 8:020, Section 2(7)(c).

(b) The cabinet may allow a public water system, on a case-by-case basis, to forego fecal coliform or E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli-positive and notifies the cabinet as specified in paragraph (a) of this subsection and the provisions of Section 2(2) of this administrative regulation apply.

(16) Analytical methodology. The analysis for the presence or absence of total coliforms shall commence within thirty (30) hours of the sample being collected, unless the cabinet waives this requirement in writing.

(a) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(b) Public water systems shall determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(c) Public water systems shall conduct total coliform analyses in accordance with one (1) of the following analytical methods:

1. Multiple-Tube Fermentation (MTF) Technique, as set forth in Standard Methods for the Examination of Water and Waste water,

1985, American Public Health Association et al, 16th edition, Method 908, 908A, and 908B-pp. 870-887, except that ten (10) fermentation tubes shall be used; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.4.1-4.6.4, pp. 114-118 (Most Probable Number Method), except that ten (10) fermentation tubes shall be used; [~~or~~]

2. Membrane Filter (MF) Technique, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 909, 909A and 909B-pp. 886-896; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.2.1-2.6, pp. 108-112; [~~or~~]

3. Presence-Absence (P-A) Coliform Test, as set forth in Standard Methods for the Examination of Water and Waste water, 1985, American Public Health Association et al, 16th edition, Method 908E-pp. 882-886; or

4. Minimal Medium ONPG-MUG (MMO-MUG) Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and Escherichia coli from Drinking Water: Comparison with Presence-Absence Techniques" (Edberg et al), Applied and Environmental Microbiology, Volume 55, pp. 1003-1008, April 1989. (The MMO-MUG Test is sometimes referred to as the Autoanalysis Colilert System.) The MMO-MUG Test with hepes buffer in lieu of phosphate buffer is an acceptable minor revision.

(d) In lieu of the ten (10) tube MTF Technique specified in paragraph (c)1 of this subsection, a public water system may use the MTF Technique using either five (5) tubes (twenty (20) ml sample portions) or a single culture bottle containing the culture medium for the MTF Technique, I.E., lauryl tryptose broth (formulated as described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908A-pp. 872), as long as a 100 ml water sample is used in the analysis;

(e) A public water system shall conduct fecal coliform analysis in accordance with the following procedure: If the MTF Technique or Presence-Absence (P-A) Coliform Test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile three (3) millimeter loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one (1) of the following methods: remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium (the laboratory may first remove a small portion of selected colonies for verification), swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the EC medium), or inoculate individual total coliform-positive colonies into EC medium. Gently shake the inoculated tubes of EC medium to insure adequate mixing and incubate in a waterbath at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours. The production of gas in the inner fermentation tube of the EC medium indicates positive fecal coliform test. The preparation of EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition. Method 908C-p. 879, paragraph 1a. Public water systems shall determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(f) A public water system shall conduct analysis of Escherichia coli in accordance with one (1) of the following analytical methods:

1. EC medium supplemented with fifty (50) micrograms/ml of 4-methylumbelliferyl-beta-D- glucuronide (MUG) final concentration). EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 879. MUG may be added to EC medium before autoclaving. EC medium supplemented with fifty (50) micrograms/ml of MUG is commercially available. At least ten (10) ml of EC medium supplemented with MUG shall be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform- positive culture to EC medium supplemented with MUG shall be as specified in paragraph (e) of this subsection for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366nm) in the dark after incubating tube at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours; or

2. Nutrient agar supplemented with 100 micrograms/ml 4-methylumbelliferyl-beta-D- glucuronide (MUG) (final concentration). Nutrient agar is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 874. This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique or any other method in which a membrane filter is used, contains E. coli. Transfer the membrane filter containing one (1) or more total coliform colonies to nutrient agar supplemented with 100 micrograms per milliliter (final concentration) of MUG. After incubating the agar plate at thirty-five (35) degrees Celsius for four (4) hours, observe the colonies under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

3. Minimal Medium ONPG-MUG (MMO-MUG) Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and Escherichia coli from Drinking Water: Comparison with Presence-Absence Techniques" (Edberg et al.), Applied and Environmental Microbiology, Volume 55, pp. 1003-1008, April 1989. (The Autoanalysis Colilert System is an MMO-MUG test). If the MMO-MUG test is total coliform-positive after a twenty-four (24) hour incubation, test the medium for fluorescence with a 366-nm ultraviolet light (preferably with a six (6) watt lamp) in the dark. If fluorescence is observed, the sample is E. coli-positive. If fluorescence is questionable (cannot be definitively read) after twenty-four (24) hours incubation, incubate the culture for an additional four (4) hours (but not to exceed twenty-eight (28) hours total), and again test the medium for fluorescence. The MMO-MUG Test with hepes buffer in lieu of phosphate buffer is the only approved formulation for the detection of E. coli.

4. As an option to subparagraph 3 of this paragraph, a system with a total coliform-positive, MUG-negative, MMO-MUG test may further analyze the culture for the presence of E. coli by transferring a one-tenth (0.1) ml, twenty-eight (28) hour MMO-MUG culture to EC Medium + MUG with a pipet. The formulation and incubation conditions of EC Medium + MUG, and observation of the results are described in subparagraph 1 of this paragraph.

(17) Response to violation.

(a) If a public water system exceeds the MCL for total coliforms set forth in Section 2 of this administrative regulation, it shall report the violation to the cabinet no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 401 KAR 8:070.

(b) If a public water system fails to comply with a coliform monitoring requirement, including the sanitary survey requirement, it shall report the monitoring violation to the cabinet within ten (10) days after the system discovers the violation, and notify the public in accordance with 401 KAR 8:070.

Section 2. Maximum Contaminant Levels (MCLs) for Microbiological Contaminants. (1) The MCL is based on the presence or absence

of total coliforms in a sample.

(a) If a public water system collects at least forty (40) samples per month and no more than five and zero-tenths (5.0) percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) If a public water system collects fewer than forty (40) samples per month, and no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) A fecal coliform-positive repeat sample or E. coli-positive repeat sample, or a total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 401 KAR 8:070, this violation may pose an acute risk to health.

(3) A public water system shall determine compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section for each month in which it is required to monitor for total coliforms.

(4) The following technologies are the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section:

(a) Protection of wells from contamination by coliforms by appropriate placement and construction;

(b) Maintenance of a disinfectant residual throughout the distribution system;

(c) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(d) Filtration or disinfection of surface water, as described in 401 KAR 8:150, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; or

(e) The development and implementation of an EPA -approved State Wellhead Protection Program under 42 USCA 300h-7, state programs to establish wellhead protection areas.

Section 3. Variances and Exemptions. Variances or exemptions from the maximum contaminant level for total coliform set forth in Section 2 of this administrative regulation shall not be permitted unless the public water system demonstrates to the cabinet's satisfaction that the violation of the total coliform maximum contaminant level is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401 KAR 8:060, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

(1) Over the past thirty (30) days, water entering the distribution system:

(a) Is free from fecal coliform or E. coli occurrence based on at least daily sampling;

(b) Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety-five (95) percent of all samples based on at least daily sampling;

(c) Complies with the total turbidity requirements of 401 KAR 8:150, Section 2; and

(d) Contains a continuous disinfection residual consistent with 401 KAR 8:150, Section 1;

(2) The public water system has had no waterborne disease outbreak while being operated in its present configuration;

(3) The public water system maintains biweekly contact with the cabinet and local health departments to assess illness possibly attributable to microbial occurrence in the public drinking water system;

(4) The public water system has evaluated, on a monthly basis, at least the number of samples specified in Section 1(2) of this administrative regulation and has not had an E. coli-positive compliance sample within the last six (6) months, unless the system demonstrates to the cabinet that the occurrence is not due to contamination entering the distribution system;

(5) The public water system has undergone a sanitary survey conducted by a party approved by the cabinet within the past twelve (12) months;

(6) The public water system has a cross connection control program acceptable to the cabinet and performs an audit of the effectiveness of the program;

(7) The public water system agrees to submit a biofilm control plan to the cabinet within twelve (12) months of the granting of the first request for a variance;

(8) The public water system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts on at least a weekly basis at a minimum of ten (10) percent of the number of total coliform sites specified for that system's size in Section 1(2) of this administrative regulation preferably using the R2A medium in Method 907A, 907B, or 907C, as set forth in the 16th edition of Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, et al; and

(9) The public water system conducts daily monitoring at distribution system sites approved by the cabinet and maintains a detectable disinfectant residual (measured as specified in 401 KAR 8:150, Section 3(1)(e)) at a minimum of ninety-five (95) percent of those points and a heterotrophic plate count of less than 500 colonies per ml (measured as specified in 401 KAR 8:150, Section 3(1)(c)) at sites without a disinfectant residual.

~~[Section 4. Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. Beginning on July 1, 1992, public water systems shall monitor in accordance with 401 KAR 8:150, Section 3(2)(a), and report in accordance with 401 KAR 8:020, Section 2(7)(a)1, although maximum turbidity limits and measurement techniques contained in subsections (4) and (5) of this section shall remain in effect until June 29, 1993, when the requirements of 401 KAR 8:150, Sections 2 and 3 shall be met.~~

~~(1) Who shall sample. Producers of water for public water systems who use surface water sources, in whole or in part, and those groundwater sources which demonstrate a variable turbidity, shall comply with this section. Semipublic systems and systems that purchase water from other systems or obtain their water from turbidity free groundwater sources are not subject to this section.~~

~~(2) Sampling frequency. At least one (1) sample per day for the determination of turbidity shall be taken at the producing facility. Turbidity level determinations shall be made within one (1) hour after sample collection.~~

~~(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.~~

~~(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.~~

~~(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method, as set forth in "Standard Methods," or by an alternate method approved in writing by the cabinet.~~

~~(6) Excessive turbidity. If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as~~

~~practicable and no later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report the excess to the cabinet within twenty four (24) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report the excess to the cabinet within twenty four (24) hours and notify the public pursuant to 401 KAR 8:070.~~

~~(7) Exceptions. Up to five (5) turbidity units may be allowed, if the supplier of water demonstrates to the cabinet that the higher turbidity does not:~~

~~(a) Interfere with disinfection;~~

~~(b) Prevent the maintenance of an effective disinfectant agent throughout the distribution system; or~~

~~(c) Interfere with microbiological determinations.]~~

Section 4. [~~5.~~] Analysis for microbiological contamination and turbidity shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet. The following documents are hereby incorporated by reference and are available for public inspection and copying subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, except state holidays, at the Division of Water, 14 [~~18~~] Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 814B-92-002, September 1992, [~~570/9-90/008, April 1990,~~] may be obtained by contacting U.S. EPA, Office of Drinking Water, Washington, D.C., 20460.

(3) Microbiological Methods for Monitoring the Environment, Water and Wastes may be obtained from ORD Publications, December 1978, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268.

(4) Copies of the MMO-MUG Test as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple-Tube Fermentation Method: (Edberg, et al), June 1988 may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235.

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation will affect approximately 918 public and semipublic water systems as well as laboratories certified to run bacteriological tests. These numbers may vary from month to month.

(a) Direct and indirect costs or savings to those affected: The amendment to this regulation allows another analytical procedure to be used to conduct bacteriological tests. Former analytical procedures are still acceptable. The new procedure, (commonly referred to as colilert) has short term and long term financial benefits and drawbacks. Whether public water systems and certified laboratories choose to use it is basically a business decision. Turbidity requirements are being removed from this regulation as they have been superseded by other regulations.

1. First year: No costs or savings are necessary. If a laboratory chooses to use the new analytical procedure, equipment will need to be purchased.

2. Continuing costs or savings: No costs or savings are necessary. A laboratory may realize some reduction in time needed to process bacteriological tests with the colilert system.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements are unchanged by this amendment.

(2) Effects on the promulgating administrative body: This amendment will have no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: No cost or savings will be realized.

1. First year: No cost or savings will be realized.

2. Continuing costs or savings: No costs or savings will be realized.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements are unchanged under this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no affect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment adds a new analytical method for testing for bacteriological contamination in drinking water. Alternative methods are still allowed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts with, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect different sizes and types of public water systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation adopts an additional analytical method for bacteriological testing and removes a section that is no longer relevant as a housekeeping measure. The additional analytical method may, in the long run, reduce costs somewhat. Any such reduction could be passed through to the consumer, absorbed by a commercial lab as additional profit, or be absorbed by a local government which owns the public water system. Some expenditures for new equipment would be necessary to use the new method. These costs could also be passed to the consumer or absorbed by the lab or local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.21 as amended at 57 Federal Register 1852(1992) and 57 Federal Register 24747(1992) establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. The amendment to this regulation allows the colilert system to be used for bacteriological testing.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations allow the colilert system to be used for bacteriological testing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, [~~PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988,~~] 42 USCA f, 300g, 300j, 40 CFR 141.23[~~(f)~~], 141.41[~~(d)~~]

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation lists sampling and analytical requirements for certain inorganic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, could affect public health.

Section 1. Community water systems and nontransient, noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in Section 12 of this administrative regulation in accordance with this section. Transient, noncommunity water systems shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in Section 12 of this administrative regulation. Monitoring shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including systems using a combination of surface and groundwater, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If a system draws water from more than one (1) source and the sources are combined before distribution, the system may sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(4) The cabinet may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, if the detection limit of the method used for analysis is less than one fifth (1/5) of the MCL. Compositing of samples shall be done in the laboratory.

(a) If the concentration in the composite sample is greater than or equal to one-fifth (1/5) of the MCL of any inorganic chemical, then a follow-up sample shall be taken within fourteen (14) days at each

sampling point included in the composite. These samples shall be analyzed for the contaminants which exceeded one-fifth (1/5) of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
Antimony	0.006	Atomic Absorption; Furnace	0.003
			0.0008[6]
		ICP-Mass Spectrometry	0.0004
		Hydride-Atomic Absorption	0.001
Asbestos	7 MFL[2]	Transmission Electron Microscopy	0.01 MFL
Barium	2	Atomic Absorption; furnace technique	0.002
		Atomic Absorption; direct aspiration	0.1
		Inductively Coupled Plasma	0.002(0.001)[1]
Beryllium	0.004	Atomic Absorption; Furnace	0.0002
			0.00002[6]
		Inductively Coupled Plasma[3]	0.0003
		ICP-Mass Spectrometry	0.0003
Cadmium	0.005	Atomic Absorption; furnace technique	0.0001
		Inductively Coupled Plasma	0.001[1]
Chromium	0.1	Atomic Absorption; furnace technique	0.001
		Inductively Coupled Plasma	0.007(0.001)[1]
Cyanide	0.2	Distillation, Spectrophotometric[4]	0.02
		Distillation, Automated, Spectrophotometric[4]	0.005
		Distillation, Selective Electrode[4]	0.05
		Distillation, Amenable, Spectrophotometric[5]	0.02
Mercury	0.002	Manual Cold Vapor Technique	0.0002
		Automated Cold Vapor Technique	0.0002
Nickel	0.1	Atomic Absorption; Furnace	0.001
			0.0006[6]
		Inductively Coupled Plasma[3]	0.005
		ICP-Mass Spectrometry	0.0005
Nitrate	10 (as N)	Manual Cadmium Reduction	0.01
		Automated Hydrazine Reduction	0.01
		Automated Cadmium Reduction	0.05
		Ion Selective Electrode	1
		Ion Chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
Selenium	0.05	Atomic Absorption; furnace	0.002
		Atomic Absorption; gaseous hydride	0.002
Thallium	0.002	Atomic Absorption; Furnace	0.001
			0.0007[6]
		ICP-Mass Spectrometry	0.0003

[1]Using concentration technique in Appendix A to EPA Method 200.7.
[2]MFL = million fibers per liter greater than ten (10) µm.
[3]Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[4]Screening method for total cyanides.
[5]Measures "free" cyanides.
[6]Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

(b) If the population served by the system is greater than 3,300 persons, then compositing may only be permitted at sampling points within a single system. In systems serving less than 3,300 persons, the cabinet may permit compositing among different systems if the five (5) sample limit is maintained.

(c) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates shall be analyzed by certified laboratories and the results reported to the cabinet within fourteen (14) days of collection.

(5) The frequency of monitoring for asbestos shall be in accordance with Section 2 of this administrative regulation; the frequency of monitoring for barium, cadmium, chromium, fluoride, mercury, and selenium shall be in accordance with Section 3 of this administrative

regulation; the frequency of monitoring for nitrate shall be in accordance with Section 4 of this administrative regulation; and the frequency of monitoring for nitrite shall be in accordance with Section 5 of this administrative regulation.

Section 2. The frequency of monitoring to determine compliance with the maximum contaminant level for asbestos specified in Section 1 of this administrative regulation shall be as follows:

(1) Each community and nontransient, noncommunity water system is required to monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the cabinet for a waiver of the monitoring requirement in subsection (1) of this section. If the cabinet grants the waiver, the system is not required to monitor for asbestos pursuant to subsection (1) of this section.

(3) The cabinet may grant a waiver of the monitoring requirement in subsection (1) of this section based on a consideration of the following factors:

(a) Potential asbestos contamination of the water source; and

(b) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect until the completion of the three (3) year compliance period. Systems not receiving a waiver shall monitor in accordance with the provisions of subsection (1) of this section.

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of Section 1 of this administrative regulation.

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system which exceeds the maximum contaminant levels as determined in Section 9 of this administrative regulation shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The cabinet may decrease the quarterly monitoring requirement to the frequency specified in subsection (1) of this section if the cabinet has determined that the system is reliably and consistently below the maximum contaminant level. This determination by the cabinet shall not be made unless a groundwater system takes a minimum of two (2) quarterly samples and a surface (or combined surface and ground) water system takes a minimum of four (4) quarterly samples.

(10) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of this section, then the cabinet may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

Section 3. The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in Section 1 of this administrative regulation for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be as follows: Groundwater systems shall take one (1) sample at each sampling point once every three (3) years. Surface water systems (or combined surface and ground) shall take one (1) sample annually at each sampling point.

(1) Groundwater systems shall take one (1) sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1993. Surface water systems, or combined surface and groundwater systems, shall take one (1) sample annually at each sampling point beginning January 1, 1993.

(2) The system may apply to the cabinet for a waiver from the monitoring frequencies specified in subsection (1) of this section.

(3) Public water systems shall take a minimum of one (1) sample while a waiver is effective. A waiver shall not be effective for more than one (1) compliance cycle (i.e., nine (9) years).

(4) A waiver may be granted if surface water systems have monitored annually for at least three (3) years and groundwater systems have conducted a minimum of three (3) rounds of monitoring. At least one (1) sample shall have been taken since January 1, 1990. Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three (3) rounds of monitoring from the new source have been completed.

(5) In determining the appropriate reduced monitoring frequency, the cabinet shall consider:

(a) Reported concentrations from all previous monitoring;

(b) The degree of variation in reported concentrations; and

(c) Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(6) A decision by the cabinet to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated upon an application by the public water system. The public water system shall specify the basis for its request. The cabinet shall review and, where appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency become available.

(7) Systems which exceed the maximum contaminant levels as calculated in Section 9 of this administrative regulation shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The cabinet may decrease the quarterly monitoring requirement to the frequencies specified in subsections (1) and (2) of this section if it has determined that the system is reliably and consistently below the maximum contaminant level. This determination may only be made when a groundwater system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

Section 4. All public water systems (community; nontransient, noncommunity; and transient, noncommunity systems) shall monitor to determine compliance with the maximum contaminant level for nitrate in Section 12 of this administrative regulation.

(1) Community and nontransient, noncommunity water systems served by groundwater systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For community and nontransient, noncommunity water systems, the repeat monitoring frequency for groundwater systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level. The cabinet may allow a groundwater system to reduce the sampling frequency to annually after four (4) consecutive quarterly samples are reliably and consistently less than the maximum contaminant level.

(3) For community and nontransient, noncommunity water systems, the cabinet may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty (50) percent of the maximum contaminant level. A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty (50) percent of the maximum contaminant level (MCL).

(4) Each transient noncommunity water system shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each community and nontransient, noncommunity system which is monitoring annually shall take subsequent samples during the quarters which previously resulted in the highest analytical result.

Section 5. All public water systems (community; nontransient, noncommunity; and transient, noncommunity systems) shall monitor to determine compliance with the maximum contaminant level for nitrite in Section 12 of this administrative regulation.

(1) All public water systems shall take one (1) sample at each sampling point in the compliance period beginning January 1, 1993 and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is less than fifty (50) percent of the MCL shall monitor at the frequency specified by the cabinet.

(3) For community, nontransient, noncommunity, and transient noncommunity water systems, the repeat monitoring frequency for a water system shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level. The cabinet may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the maximum contaminant level.

(4) Systems which are monitoring annually shall take each subsequent sample during the quarters which previously resulted in the highest analytical result.

Section 6. Confirmation Sampling. (1) If the results of sampling for asbestos, barium, cadmium, chromium, fluoride, mercury, or selenium indicate an exceedance of the maximum contaminant level, the cabinet may require that one (1) additional sample be collected within two (2) weeks after the initial sample was taken at the same sampling point.

(2) If nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample. Public water systems unable to comply with the twenty-four (24) hour sampling requirement shall immediately notify the consumers served by the area served by the public water system in accordance with 401 KAR 8:070. Systems exercising this option shall take and analyze a confirmation sample within two (2) weeks of notification of the analytical results of the first sample.

(3) If a confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with Section 9 of this administrative regulation. The cabinet may delete results of obvious sampling errors.

Section 7. The cabinet may require more frequent monitoring than specified in Sections 2 to 5 of this administrative regulation or may require confirmation samples for positive and negative results.

Section 8. Public water systems may apply to the cabinet to conduct more frequent monitoring than the minimum monitoring frequencies specified in this administrative regulation.

Section 9. Compliance with Section 1 of this administrative regulation shall be determined based on the analytical result obtained at each sampling point.

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be determined by a running annual average at any sampling point. If the average at any sampling point is greater than the maximum contaminant level, then the system shall be deemed to be out of compliance. If any one (1) sample would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

(2) For systems which are monitoring annually, or less frequently, the system shall be deemed to be out of compliance with the maximum contaminant levels for asbestos, barium, cadmium, chromium, fluoride, mercury and selenium if the level of a contaminant at any sampling point is greater than the maximum contaminant level. If a confirmation sample is required by the cabinet, the determination of compliance will be based on the average of the two (2) samples.

(3) Compliance with the maximum contaminant levels for nitrate and nitrite is determined based on one (1) sample if the levels of these contaminants is below the maximum contaminant levels. If the levels of nitrate or nitrite exceed the maximum contaminant levels in the initial sample, a confirmation sample is required in accordance with Section 6(2) of this administrative regulation, and compliance shall be determined based on the average of the initial and confirmation samples.

(4) If a public water system has a distribution system separable from other parts of the distribution system with no inter- connections, the cabinet may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

Section 10. Each public water system shall monitor at the time designated by the cabinet during each compliance period, as specified in writing to the public water system.

Section 11. Inorganic Analysis. (1) Analytical methods for inorganic chemicals. Analyses for asbestos, barium, cadmium, chromium, mercury, nitrate, nitrite, and selenium shall be conducted in accordance with 40 CFR 141.23(k)(1) 1993, hereby adopted without change.

(2) Analytical methods for arsenic: Analyses for arsenic shall be conducted in accordance with 40 CFR 141.23(k)(2)1993, hereby adopted without change.

(3) Analytical methods for fluoride: Analyses for fluoride shall be conducted in accordance with 40 CFR 141.23(k)(3)1993, hereby adopted without change.

(4) Analysis and sample collection methods for the inorganic contaminants listed at 40 CFR 141.23(k)(4), and (5), 1993 shall be conducted in accordance with the methods described by those sections of federal regulation which are hereby adopted without change.

(5) Analysis under this administrative regulation shall only be conducted by laboratories that have been certified by EPA or the cabinet. Laboratories may conduct sample analysis under provisional certification until January 1, 1996. To receive certification to conduct analyses of antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium, the laboratory shall:

(a) Analyze Performance Evaluation samples which include those substances provided by the Environmental Protection Agency's Environmental Monitoring Systems Laboratory or equivalent samples provided by the cabinet.

(b) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance Limit
Antimony	plus or minus 30% at greater than or equal to 0.006 mg/l
Asbestos	2 standard deviations based on study statistics
Barium	plus or minus 15% at greater than or equal to 0.15 mg/l

Beryllium	plus or minus 15% at greater than or equal to 0.001 mg/l
Cadmium	plus or minus 20% at greater than or equal to 0.002 mg/l
Chromium	plus or minus 15% at greater than or equal to 0.01 mg/l
Cyanide	plus or minus 25% at greater than or equal to 0.1 mg/l
Fluoride	plus or minus 10% at greater than or equal to 1 to 10 mg/l
Mercury	plus or minus 30% at greater than or equal to 0.0005 mg/l
Nickel	plus or minus 15% at greater than or equal to 0.01 mg/l
Nitrate	plus or minus 10% at greater than or equal to 0.4 mg/l
Nitrite	plus or minus 15% at greater than or equal to 0.4 mg/l
Selenium	plus or minus 20% at greater than or equal to 0.01 mg/l
Thallium	plus or minus 30% at greater than 0.002 mg/l

Section 12. The maximum contaminant levels for inorganic contaminants specified in subsections (2) to (6), (10), and (11) to (15) of this section shall apply to community water systems and nontransient, noncommunity water systems. The maximum contaminant level specified in subsection (1) of this section shall apply only to community water systems. The maximum contaminant levels specified in subsections (7), (8), and (9) of this section shall apply to community water systems; nontransient, noncommunity water systems; and transient noncommunity water systems.

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL (mg/l)
(1) Fluoride	4.0
(2) Asbestos	7 Million Fibers/liter (longer than 10 micrometers)
(3) Barium	2
(4) Cadmium	0.005
(5) Chromium	0.1
(6) Mercury	0.002
(7) Nitrate	10 (as Nitrogen)
(8) Nitrite	1 (as Nitrogen)
(9) Total Nitrate and Nitrite	10 (as Nitrogen)
(10) Selenium	0.05
(11) Antimony	0.006
(12) Beryllium	0.004
(13) Cyanide (as free Cyanide)	0.2
(14) Nickel	0.1
(15) Thallium	0.002
(16) Arsenic	0.05

Section 13. The following are hereby identified as the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant levels for inorganic contaminants identified in Section 12 of this administrative regulation, except fluoride:

BAT FOR INORGANIC COMPOUNDS

CHEMICAL NAME	BAT
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6[2],7
Cyanide	5,7,10
Mercury	2[1],4,6[1],7[1]
Nickel	5,6,7
Nitrate	5,7,9
Selenium	1,2[3],6,7,9
Thallium	1,5

[1]BAT only if influent Hg concentrations are greater than or equal to 10 µg/l.
[2]BAT for Chromium III only.
[3]BAT for Selenium IV only.

KEY TO BATS IN TABLE

1 = Activated Alumina	6 = Lime Softening
2 = Coagulation and Filtration	7 = Reverse Osmosis
3 = Direct and Diatomite Filtration	8 = Corrosion Control
4 = Granular Activated Carbon	9 = Electrodialysis
5 = Ion Exchange	10 = Chlorine
	11 = Ultraviolet

~~[Section 1. All producers of water for public water systems shall sample for the presence of inorganic chemicals as listed in Section 4 of this regulation. Semipublic systems and systems that purchase all of their water from another public water system are not required to sample for inorganic chemicals.~~

~~Section 2. Sampling Frequency. (1) Community systems using surface water. All community water systems utilizing surface water sources shall sample for the presence of inorganic chemicals once per year.~~

~~(2) Community systems using groundwater. All community water systems utilizing groundwater sources shall sample for the presence of inorganic chemicals once every three (3) years.~~

~~(3) Noncommunity systems. All noncommunity water systems shall sample for the presence of nitrates once every three (3) years.~~

~~Section 3. Sampling Point. The sampling point for identifying the presence of inorganic chemicals shall be at any free flowing outlet of the distribution system.~~

~~Section 4. Maximum Inorganic Chemical Limits. (1) Maximum contaminant levels. The following are the maximum contaminant levels for inorganic chemicals:~~

~~Contaminant~~	~~Level, milligrams per liter~~
~~Arsenic~~	~~0.05~~
~~Barium~~	~~1.00~~
~~Cadmium~~	~~0.010~~
~~Chromium~~	~~0.05~~
~~Fluoride~~	~~4.00~~
~~Lead~~	~~0.05~~
~~Mercury~~	~~0.002~~
~~Nitrate (as N)~~	~~10.00~~
~~Selenium~~	~~0.01~~
~~Silver~~	~~0.05~~

~~(2) Nitrate. The maximum contaminant level for nitrate is applicable to all public water systems. The levels for the other inorganic chemicals apply only to community water systems.~~

~~(3) Fluoride. The maximum limit for fluoride is applicable to community water systems only. Supplemental fluoridation of public water supplies is covered by 401 KAR 8:650.~~

~~Section 5. Analytical Method. Analyses for inorganic chemicals shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency in accordance with 40 CFR~~

~~141.23(f).~~

~~Section 6. Inorganic Chemical Limit Exceeded (Except Nitrate). (1) Reporting. If the level of any contaminant listed in Section 4 (except nitrate) exceeds the maximum contaminant level, the supplier of water shall report to the cabinet within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.~~

~~(2) Public notification required. When the average of the routine sample that exceeds the maximum limit together with the three (3) additional samples, as set forth above, rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall notify the cabinet and give notice to the public in accordance with 401 KAR 8:070. Monitoring by the supplier after public notification shall be at a frequency designated by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule, as a condition to a variance, exemption or enforcement action, becomes effective.~~

~~Section 7. Nitrate Limit Exceeded. The maximum contaminant level for nitrate shall be determined on the basis of the mean of two (2) analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within twenty four (24) hours, and if the mean average of the two (2) analyses exceeds the maximum contaminant level, the supplier of water shall report this to the cabinet and shall notify the public in accordance with 401 KAR 8:070.~~

~~(1) When MCL for nitrate may be exceeded. Nitrate levels not exceeding twenty (20) mg/l may be allowed in a noncommunity water system if:~~

~~(a) No water from the system is or will be available to children under six (6) months of age; and~~

~~(b) There will be continuous posting of the fact that nitrate levels exceed ten (10) mg/l and the notice lists the potential health effects of exposure;~~

~~(c) Local and state public health authorities are notified annually of nitrate levels that exceed ten (10) mg/l; and~~

~~(d) No adverse health effects result.~~

~~(2) Public notification required. Where the cabinet allows levels of nitrate up to twenty (20) mg/l, public notification shall be required when the MCL exceeds twenty (20) mg/l.~~]

Section 14. [~~8.~~] Special Monitoring for Sodium. (1) Those required to sample. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.

(2) Sampling frequency.

(a) Community water systems, surface source. Systems utilizing surface water sources in whole or in part shall collect and analyze samples semiannually. Samples shall be collected one (1) time during the wet season and one (1) time during the dry season per calendar year.

(b) Community water systems, groundwater sources. Systems utilizing only groundwater sources shall collect and analyze samples annually.

(c) Samples required. The minimum number of samples required to be taken by the system shall be based upon the number of treatment plants used by the system, except the cabinet may consider multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for the purpose of determining the minimum number of samples. The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(d) Analyses for sodium shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency in 40 CFR 141.41(d) (1993), hereby adopted without change. [~~or by the cabinet.~~]

(3) Reporting. The supplier of water shall report to the cabinet the results of the analyses for sodium within ten (10) days of the end of the month in which the sample results were received or within ten (10) days following the end of the required monitoring period, as determined by the cabinet, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within ten (10) days of the end of the month in which the analytical results of the last sample used for the annual average was received.

(4) Acceptable sodium limits. A level of twenty (20) mg/l of sodium shall be considered an optimum concentration for drinking water. The supplier of water shall notify appropriate local and state public health officials of the sodium levels, by written notice by direct mail, within three (3) months of testing. A copy of each notice required to be provided by this subsection [~~paragraph~~] shall be sent to EPA and the cabinet within ten (10) days of its issuance. The supplier of water shall not be required to notify appropriate local and state public health officials of the sodium levels where the state provides such notices in lieu of the supplier.

(5) Public notification. The provisions of 401 KAR 8:070 do not apply to sodium levels unless the water supplier opts to notify the public.

Section 15. [~~9.~~] Variance and Exemptions for Fluoride. In addition to the requirements for requesting a variance or exemption provided in 401 KAR 8:060, the following provisions are applicable when a variance or exemption from the maximum contaminant level for fluoride is requested:

(1) Best available technology. The following are the best available technology, treatment techniques or other means generally available for achieving compliance with the maximum contaminant level for fluoride:

(a) Activated alumina absorption, centrally applied; and

(b) Reverse osmosis, centrally applied.

(2) Public water systems shall apply the best available technology, treatment techniques, or other means generally available to the water system and specified in subsection (1)(a) or (b) of this section, prior to the cabinet's consideration of a variance request for fluoride, unless:

(a) Pursuant to 401 KAR 8:060, the public water system submits to the cabinet information, based upon studies of the public water system and other relevant information, that demonstrates that the technology, treatment technique or other available means [~~method~~] identified in subsection (1) of this section is not available and effective for the public water system; and

(b) The cabinet determines, based upon the information submitted that the best available technology, treatment technique or other means [~~method~~] generally available is not available and effective for the system.

(3) [~~; (c)~~] Prior to granting a variance, the cabinet shall issue a compliance schedule which requires the public water system to examine the following treatment techniques to determine the probability that any of these methods will significantly reduce the level of fluoride for that system, and, if so, to determine if those methods are technically feasible and economically reasonable; and to determine if the fluoride reductions obtained are commensurate with the costs incurred with the installation and use of such treatment methods for that system:

(a) [~~1.~~] Modification of lime softening;

(b) [~~2.~~] Alum coagulation;

(c) [~~3.~~] Electrodialysis;

(d) [~~4.~~] Anion exchange resins;

(e) [~~5.~~] Well field management;

(f) [~~6.~~] Alternate source; and

(g) [7.] Regionalization.

(4) [(d)] If the cabinet determines that a treatment technique identified in subsection (3) of this section [paragraph (c) of this subsection] is technically feasible, economically reasonable and will achieve fluoride reductions commensurate with costs incurred with the installation and use of the [such] treatment technique for the public water system, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule issued pursuant to 401 KAR 8:060.

[Section 10. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation applies to approximately 825 public water systems, and 79 laboratories certified to test for inorganic contaminants in drinking water.

(a) Direct and indirect costs or savings to those affected: This regulation incorporates testing requirements for inorganic chemicals in drinking water as promulgated by the Environmental Protection Agency on January 30, 1991 and July 17, 1992, usually referred to as Phase II and Phase V chemical regulations.

1. First year: Public water systems will be required to monitor for most inorganic chemicals either annually for surface water systems or every three years for groundwater systems. Asbestos monitoring is every three years, or less if the Cabinet grants a waiver. Nitrate monitoring shall be quarterly for surface systems and annually for groundwater systems. Nitrite monitoring shall be once during the first three years of a compliance period and will vary subsequently depending on results. All monitoring will increase if violations occur. The Cabinet is in the process of conducting the monitoring for the first three year cycle of Phase II and Phase V chemical contaminants for most Public Water Systems serving less than 10,000 persons at no cost to the Public Water System. For commercial, industrial, and federal facilities and public water systems serving over 10,000 persons, this monitoring is the responsibility of the system. The annual cost for all Phase II and Phase V contaminants is about $12,000. Subsequent monitoring (Beginning in January 1996) will be the responsibility of the public water system.

2. Continuing costs or savings: Most public water systems serving less than 10,000 persons will have no continuing cost or savings until 1996 unless a violation of the maximum contaminant level occurs and best available technology is applied. Best available technology varies with the chemical found and costs vary from technology to technology as well as with the intensity of treatment required to remove the contaminant. These costs may range from $2,000 for granular activated carbon to $65,000 for packed tower aeration. Public water systems may be required to pay for check samples. Industiral, commercial, federal and facilities serving over 10,000 persons will continue to incur monitoring cost.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The cost for monitoring for all Phase II and Phase V contaminants (inorganic, organic, and unregulated) is estimated by EPA to be approximately $12,000 for four quarters of annual testing. Most public water systems serving less than 10,000 persons will not be faced with this cost until 1996. The Cabinet is postponing testings for asbestos and dioxin pending development of laboratory facilities.

(b) Reporting and paperwork requirements: Results of monitoring for inorganic contaminants will be submitted to the Cabinet. For the first three years most of these reports will come from the Cabinet's laboratory. After that, public water systems will be responsible for these reports although as a practical matter most reports will come from certified commercial laboratories.

(2) Effects on the promulgating administrative body: This regulation will have significant impacts on the promulgating administrative body.

(a) Direct and indirect costs or savings: The Cabinet intends to absorb the cost of first time monitoring for most public water systems serving less than 10,000 persons. About $600,000 per year will be spent on this effort. In addition, the Cabinet must maintain the data resulting from this monitoring as well as submit this data to EPA. These functions will be accomplished with the current staff.

1. First year: Both monitoring and recordkeeping tasks will be incurred in the first year.

2. Continuing costs or savings: For three years both monitoring and recordkeeping costs will be on-going.

3. Additional factors increasing or decreasing costs: Recordkeeping costs will be on-going from the fourth year out.

(b) Reporting and paperwork requirements: The Cabinet must maintain data resulting from inorganic chemical monitoring and submit the data to EPA.

(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect State revenues. Public water systems owned by local governments will need to pick up monitoring costs in the fourth year of this regulation. However, this will be an indirect cost, probably offset by higher water bills.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to this regulation were not considered because any alternative would be inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts with, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict

exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect differences in public water systems and the type chemical being monitored.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation requires monitoring for certain inorganic contaminants. The cost of this monitoring should be passed through to the consumer. However, a public water system owned by a local government could have these costs absorbed by the local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.23 and 40 CFR 141.62 as amended by 56 Federal Register 3579(1991), 56 Federal Register 30274(1991), and 57 Federal Register 31838(1992) establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. The amendments to this regulation set out monitoring and testing requirements, maximum contaminant levels and best available technology for certain inorganic chemicals in drinking water.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring and testing requirements, maximum contaminant levels and best available technology for certain inorganic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:300. Lead and copper.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141 (1993), [~~PL 93-523 The Safe Drinking Water Act as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,~~] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation bans lead in drinking water facilities and provides standards for lead and copper in drinking water. [~~It is anticipated that this regulation will be expanded substantially when the Environmental Protection Agency proposes the final lead rule.~~]

Section 1. Prohibition of Use of Lead Pipes, Solder and Flux. Any pipe, solder, or flux used in the installation or repair of any public water system, or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead-free within the meaning of subsections (1) and (2) of this section. This prohibition does not apply to leaded joints necessary for the repair of cast iron pipes.

(1) The term "lead-free," when used with respect to solder and flux, refers to solders and flux containing not more than two-tenths (0.2) percent lead, and

(2) The term "lead-free," when used with respect to pipes and fittings, refers to pipes and pipe fittings containing not more than eight and zero-tenths (8.0) percent lead.

Section 2. Special Notice for Lead. (1) When notice served. On or before June 19, 1988, the owner or operator of each community water system and each nontransient noncommunity water system shall have issued [~~issue~~] notice to persons served by that system that may be affected by lead contamination of their drinking water. The cabinet may require subsequent notices. [~~Notice under this section is required even if no violation of the maximum contaminant level for lead in 401 KAR 8:250 exists.~~]

(2) When notice is not required. Notice under subsection (1) of this section is not required if the system demonstrates that the water system, including the residential and nonresidential portions connected to the water system, is lead-free.

(3) Manner of notice. Notice shall have been [~~be~~] given to persons served by the system either by three (3) newspaper notices, one (1) for each of three (3) consecutive months and the first no later than June 19, 1988; or once by mailed notice with the water bill or in a separate mailing, no later than June 19, 1988; or once by hand delivery no later than June 19, 1988. For nontransient noncommunity water systems, notice may have been [~~be~~] given by continuous posting. If posting is used, the notice shall have been [~~be~~] posted in a conspicuous place in the area served by the system, shall have begun [~~begin~~] no later than June 19, 1988, and shall have continued [~~continue~~] for three (3) months.

(a) General content of notice. Notices issued under this section shall provide a clear and readily understandable explanation of the

potential sources of lead in drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the water system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any. Use of the mandatory language in subsection (4) of this section shall be sufficient to explain potential adverse health effects.

(b) Each notice shall also include specific advice on how to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner, operator, or designee of the public water system as a source of additional information regarding the notice. Where appropriate, the notice shall be multilingual.

(4) Mandatory health effects information. When providing the public notice of the potential adverse health effects of lead in drinking water required in this section, the owner or operator of the water system shall include the [~~following~~] specific language in 401 KAR 8:070, Section 6(74). [~~the notice:~~

~~"The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain levels of exposure. There is currently a standard of 0.050 parts per million (ppm). Based on new health information, EPA is likely to lower this standard significantly.~~

~~"Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though your water may not be in violation of the current standard.~~

~~"EPA and others are concerned about lead in drinking water. Too much lead in the human body can causes serious damage to the brain, kidneys, nervous system, and red blood cells. The greatest risk, even with short term exposure, is to young children and pregnant women.~~

~~"Lead levels in your drinking water are likely to be highest:~~
~~- if your home or water system has lead pipes, or~~
~~- if your home has copper pipes with lead solder, and~~
~~- if the home is less than five years old, or~~
~~- if you have soft or acidic water, or~~
~~- if water sits in the pipes for several hours."~~]

(5) Cabinet notice. The cabinet may give the notice to the public required by this section on behalf of the owner or operator. However, the owner or operator remains legally responsible for ensuring that the requirements of this section are met.

[~~Section 2. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

Section 3. General Requirements. (1) The requirements of this administrative regulation constitute the primary drinking water regulations for lead and copper. Unless otherwise indicated, each of the provisions of this administrative regulation applies to community water systems and nontransient, noncommunity water systems (hereinafter referred to as "water systems" or "systems").

(2) The requirements set forth in this administrative regulation shall take effect upon adoption.

(3) This administrative regulation establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(4) Lead and copper action levels.

(a) The lead action level is exceeded if the concentration of lead in more than ten (10) percent of tap water samples collected during any monitoring period conducted in accordance with Section 9 of this administrative regulation is greater than 0.015 mg/l (i.e., if the ninetieth (90th) percentile lead level is greater than 0.015 mg/l).

(b) The copper action level is exceeded if the concentration of copper in more than ten (10) percent of tap water samples collected during any monitoring period conducted in accordance with Section 9 of this administrative regulation is greater than one and three-tenths (1.3) mg/l (i.e., if the ninetieth (90th) percentile copper level is greater than one and three-tenths (1.3) mg/L).

(c) The ninetieth (90th) percentile lead and copper levels shall be computed as follows:

1. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number one (1) for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

2. The number of samples taken during the monitoring period shall be multiplied by nine-tenths (0.9).

3. The contaminant concentration in the numbered sample yielded by the calculation in subparagraph 2 of this paragraph is the 90th percentile contaminant level.

4. For water systems serving fewer than 100 people that collect five (5) samples per monitoring period, the ninetieth (90th) percentile is computed by taking the average of the highest and second highest concentrations.

(5) Corrosion control treatment requirements.

(a) All water systems shall install and operate optimal corrosion control treatment as defined in 401 KAR 8:010.

(b) Any water system that complies with the applicable corrosion control treatment requirements approved by the cabinet under Sections 4 and 5 of this administrative regulation shall be deemed in compliance with the treatment requirement contained in paragraph (a) of this subsection.

(6) Source water treatment requirements. Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the cabinet under Section 6 of this administrative regulation.

(7) Lead service line replacement requirements. Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in Section 7 of this administrative regulation.

(8) Public education requirements. Any system exceeding the lead action level shall implement the public education requirements contained in Section 8 of this administrative regulation.

(9) Monitoring and analytical requirements. Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under this administrative regulation shall be completed in compliance with Sections 9 to 12 of this administrative regulation.

(10) Reporting requirements. Systems shall report to the cabinet any information required by this administrative regulation.

(11) Recordkeeping requirements. Systems shall maintain records in accordance with Section 14 of this administrative regulation.

(12) Violation of national primary drinking water regulations. Failure to comply with the applicable requirements of Sections 3 to 14 of this administrative regulation, shall constitute a violation of the primary drinking water regulations for lead and copper and the system shall notify the public pursuant to 401 KAR 8:070 and shall issue the notices required by this administrative regulation.

Section 4. Corrosion Control Treatment Applicability. The following corrosion control treatment steps shall apply to small, medium-size, and large water systems.

(1) Systems shall complete applicable corrosion control treatment requirements described in Section 5 of this administrative regulation, by the deadlines established in this section.

(a) A large system (serving more than 50,000 persons) shall complete the corrosion control treatment steps specified in subsection (4) of this section, unless it is deemed to have optimized corrosion control under subsection (2)(b) or (c) of this section.

(b) A small system (serving less than or equal to 3,300 persons) and a medium-size system (serving more than 3,300 and less than or equal to 50,000 persons) shall complete the corrosion control treatment steps specified in subsection (5) of this section, unless it is deemed to have optimized corrosion control under subsection (2)(a), (b), or (c) of this section.

(2) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one (1) of the following criteria:

(a) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two (2) consecutive six (6) month monitoring periods conducted in accordance with Section 9 of this administrative regulation.

(b) A water system may be deemed by the cabinet to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the cabinet that it has conducted activities equivalent to the corrosion control steps applicable to the system under this section. If the cabinet makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with Section 5(6) of this administrative regulation. A system shall provide the cabinet with the following information in order to support a determination under this paragraph:

1. The results of all test samples collected for each of the water quality parameters in Section 5(3)(c) of this administrative regulation;

2. A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in Section 5(3)(a) of this administrative regulation, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

3. A report explaining how corrosion control has been installed and how it is being maintained to ensure minimal lead and copper concentrations at consumers' taps; and

4. The results of tap water samples collected in accordance with Section 9 of this administrative regulation at least once every six (6) months for one (1) year after corrosion control has been installed.

(c) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with Section 9 of this administrative regulation and source water monitoring conducted in accordance with Section 11 of this administrative regulation that demonstrates for two (2) consecutive six (6) month monitoring periods that the difference between the ninetieth (90th) percentile tap water lead level computed under Section 3(4)(c) of this administrative regulation, and the highest source water lead concentration, is less than the practical quantitation level for lead specified in Section 12 of this administrative regulation and 40 CFR 141.89 (a)(1)(ii) (1993), hereby adopted without change.

(3) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps if the system meets both action levels during each of two (2) consecutive monitoring periods conducted pursuant to Section 9 of this administrative regulation and submits the results to the cabinet. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The cabinet may require a system to repeat treatment steps previously completed by the system if the cabinet determines it necessary to implement properly the treatment requirements of this section. The cabinet shall notify the system in writing of such a determination and explain the basis for its decision.

(4) Treatment steps and deadlines for large systems. Except as provided in subsection (2)(b) and (c) of this section, large systems shall complete the following corrosion control treatment steps, described in the referenced portions of Sections 5, 9, and 10 of this administrative regulation, by the indicated dates.

(a) Step 1: The system shall have conducted the initial monitoring required by Sections 9(4)(a) and 10(2) of this administrative regulation during two (2) consecutive six (6) month monitoring periods by January 1, 1993.

(b) Step 2: The system shall complete the corrosion control studies required by Section 5(3) of this administrative regulation by July 1, 1994.

(c) Step 3: The cabinet shall approve or designate an optimal corrosion control treatment pursuant to Section 5(4) of this administrative regulation by January 1, 1995.

(d) Step 4: The system shall install the optimal corrosion control treatment required by Section 5(5) of this administrative regulation by January 1, 1997.

(e) Step 5: The system shall complete the follow-up sampling required by Sections 9(4)(b) and 10(3) of this administrative regulation by January 1, 1998.

(f) Step 6: The cabinet shall review installation of treatment and approve or designate optimal water quality control parameters pursuant to Section 5(6) of this administrative regulation, by July 1, 1998.

(g) Step 7: The system shall operate in compliance with the optimal water quality control parameters approved or designated by the cabinet, pursuant to Section 5(7) of this administrative regulation, and continue to conduct tap sampling as required by Sections 9(4)(c) and 10(4) of this administrative regulation.

(5) Treatment steps and deadlines for small and medium-size systems. Except as provided in subsection (2) of this section, small and medium-size systems shall complete the following corrosion control treatment steps described in the referenced portions of Sections 5, 9, and 10 of this administrative regulation by the indicated time periods.

(a) Step 1: The system shall conduct the initial tap sampling required by Sections 9(4)(a) and 10(2) of this administrative regulation until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under Section 9(4)(d) of this administrative regulation. A system exceeding the lead or copper action level shall recommend to the cabinet the optimal corrosion control treatment required by Section 5(1) of this administrative regulation within six (6) months after it exceeds one (1) the action levels.

(b) Step 2: Within twelve (12) months after a system exceeds the lead or copper action level, the cabinet may require the system to perform the corrosion control studies required by Section 5(2) of this administrative regulation. If the cabinet does not require the system to perform corrosion control studies, the cabinet shall specify optimal corrosion control treatment pursuant to Section 5(4) of this administrative regulation within the following timeframes:

1. For medium-size systems, within eighteen (18) months after the system exceeds the lead or copper action level; or

2. For small systems, within twenty-four (24) months after the system exceeds the lead or copper action level.

(c) Step 3: If the cabinet requires a system to perform corrosion control studies pursuant to paragraph (b) of this subsection, the system shall complete the studies required by Section 5(3) of this administrative regulation within eighteen (18) months after the cabinet notifies the system that the studies be conducted.

(d) Step 4: If the system has performed corrosion control studies

pursuant to paragraph (b) of this subsection, the cabinet shall approve or designate optimal corrosion control treatment pursuant to Section 5(4) of this administrative regulation within six (6) months after completion of step 3 in paragraph (c) of this subsection.

(e) Step 5: The system shall install the optimal corrosion control treatment required by Section 5(5) of this administrative regulation within twenty-four (24) months after the cabinet approves or designates the treatment.

(f) Step 6: The system shall complete the follow-up sampling required by Sections 9(4)(b) and 10(3) of this administrative regulation within thirty-six (36) months after the cabinet approves or designates optimal corrosion control treatment.

(g) Step 7: The cabinet shall review the system's installation of treatment and approve or designate optimal water quality control parameters pursuant to Section 5(6) of this administrative regulation within six (6) months after completion of step 6 in paragraph (f) of this subsection.

(h) Step 8: The system shall operate in compliance with the optimal water quality control parameters approved or designated by the cabinet pursuant to Section 5(7) of this administrative regulation and shall continue to conduct the tap sampling required by Sections 9(4)(c) and 10(4) of this administrative regulation.

Section 5. Description of Corrosion Control Treatment Requirements. Each system shall complete the corrosion control treatment requirements described below which are applicable to the system under Section 4 of this administrative regulation.

(1) System recommendation regarding corrosion control treatment. Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one (1) or more of the corrosion control treatments listed in subsection (3)(a) of this section which the system believes constitutes optimal corrosion control for that system. The cabinet may require the system to conduct additional water quality parameter monitoring in accordance with Section 10(2) of this administrative regulation to assist the cabinet in reviewing the system's recommendation.

(2) Cabinet decision to require studies of corrosion control treatment (applicable to small and medium size systems). Small or medium-size systems that exceed the lead or copper action level may be required to perform corrosion control studies under subsection (3) of this section to identify optimal corrosion control treatment for the system.

(3) Performance of corrosion control studies.

(a) A public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments, to identify the optimal corrosion control treatment for that system:

1. Alkalinity and pH adjustment;

2. Calcium hardness adjustment; and

3. The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(b) The water system shall evaluate each of the corrosion control treatments using either pipe rig or loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(c) The water system shall measure the following water quality parameters in tests conducted under this subsection before and after evaluating the corrosion control treatments listed above:

1. Lead;

2. Copper;

3. pH;

4. Alkalinity;

5. Calcium;

6. Conductivity;

7. Orthophosphate (when an inhibitor containing a phosphate compound is used);

8. Silicate (when an inhibitor containing a silicate compound is used); and

9. Water temperature.

(d) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document the constraints with at least one (1) of the following:

1. Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; or

2. Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(e) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(f) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the cabinet in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (a) through (e) of this subsection.

(4) Cabinet designation or approval of a designated optimal corrosion control treatment. (a) Based upon consideration of available information including, where applicable, studies performed under subsection (3) of this section and a system's recommended treatment alternative, the cabinet shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatments from among those listed in subsection (3)(a) of this section. When approving or designating optimal treatment the cabinet shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(b) The cabinet shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the cabinet requests additional information to aid its review, the water system shall provide the information.

(5) Installation of optimal corrosion control. Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment approved by the cabinet under subsection (4) of this section.

(6) Cabinet review of treatment and specification of optimal water quality control parameters. The cabinet shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment approved by the cabinet in subsection (4) of this section.

(a) Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the cabinet shall approve:

1. A minimum value or a range of values for pH measured at each entry point to the distribution system;

2. A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than seven and zero-tenths (7.0), unless the cabinet determines that meeting a pH level of seven and zero-tenths (7.0) is not technologically feasible or is not necessary for the system to optimize corrosion control;

3. If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the cabinet determines is necessary to form a passivating film on the interior

walls of the pipes of the distribution system;

4. If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples; and

5. If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(b) The values for the applicable water quality control parameters listed above shall be those that the cabinet determines reflect optimal corrosion control treatment for the system. The cabinet may designate values for additional water quality control parameters determined by the cabinet to reflect optimal corrosion control for the system. The cabinet shall notify the system in writing of these determinations and explain the basis for its decisions.

(7) All systems shall maintain water quality parameter values at or above minimum values or within ranges designated or approved by the cabinet under subsection (6) of this section in each sample collected under Section 10(4) of this administrative regulation. If the water quality parameter value of any sample is below the minimum value or outside the range designated or approved by the cabinet, then the system is out of compliance with this subsection. As specified in Section 10(4) of this administrative regulation, the system may take a confirmation sample for any water quality parameter value no later than three (3) days after the first sample. If a confirmation sample is taken, the result shall be averaged with the first sampling result and the average shall be used for any compliance determinations under this subsection. The cabinet may delete results of obvious sampling errors from this calculation.

(8) Upon its own initiative, or in response to a request by a water system or other interested parties, the cabinet may modify the optimal corrosion control treatment under subsection (4) of this section or optimal water quality control parameters under subsection (6) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The cabinet may modify its determination if it concludes that change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the cabinet's decision, and provide an implementation schedule for completing the treatment modifications.

Section 6. Source Water Treatment Requirements. (1) Deadlines for completing source water treatment steps. Systems shall complete the applicable source water monitoring and treatment requirements, described in the referenced portions of subsection (2) of this section and Sections 9 and 11 of this administrative regulation, by the following deadlines.

(a) Step 1: A system exceeding the lead or copper action level shall complete the lead and copper source water monitoring required by Section 11(2) of this administrative regulation and make a treatment recommendation to the cabinet pursuant to subsection (2)(a) of this section within six (6) months after exceeding the lead or copper action level.

(b) Step 2: The cabinet shall make a determination regarding source water treatment as provided by subsection (2)(b) of this section within six (6) months after submission of monitoring results under paragraph (a) of this subsection.

(c) Step 3: If the cabinet requires installation of source water treatment, the system shall install the treatment required by subsection (2)(c) of this section within twenty-four (24) months after completion of paragraph (b) of this subsection.

(d) Step 4: The system shall complete the follow-up tap water monitoring required by Section 9(4)(b) of this administrative regulation and the source water monitoring required by Section 11(3) of this administrative regulation within thirty-six (36) months after completion of paragraph (b) of this subsection.

(e) Step 5: The cabinet shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels pursuant to subsection (2)(d) of this section within six (6) months after completion of paragraph (d) of this subsection.

(f) Step 6: The system shall operate in compliance with the maximum permissible lead and copper source water levels designated by the cabinet pursuant to subsection (2)(d) of this section and shall continue the source water monitoring required by Section 11(4) of this administrative regulation.

(2) Description of source water treatment requirements.

(a) Any system which exceeds the lead or copper action level shall recommend in writing to the cabinet the installation and operation of one (1) of the source water treatments listed in paragraph (b) of this subsection. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(b) The cabinet shall evaluate the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the cabinet determines that treatment is needed, the cabinet shall either require installation and operation of the source water treatment recommended by the system or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation, and filtration. If the cabinet requests additional information to aid in its review, the water system shall provide the information by the date specified by the cabinet in its request. The cabinet shall notify the system in writing of its determination and set forth the basis for its decision.

(c) Each system shall properly install and operate the source water treatment designated by the cabinet under paragraph (b) of this subsection.

(d) The cabinet shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine if the system has properly installed and operated the source water treatment designated by the cabinet. Based upon its review, the cabinet shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. The maximum permissible lead and copper concentrations shall reflect the contaminant removal capability of the treatment, assuming the treatment is properly operated and maintained. The cabinet shall notify the system in writing and explain the basis for its decision.

(e) Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the cabinet at each sampling point monitored in accordance with Section 11 of this administrative regulation. The system is in violation of this subsection if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the cabinet.

(f) Upon its own initiative or in response to a request by a water system or other interested party, the cabinet may modify its determination of the source water treatment under paragraph (b) of this subsection, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (d) of this subsection. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The cabinet may modify its determination if it concludes that a change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the cabinet's decision, and provide an implementation schedule for completing the treatment modifications.

Section 7. Lead Service Line Replacement Requirements. (1)

Systems that fail to meet the lead action level in tap samples taken pursuant to Section 9(4)(b) of this administrative regulation, after installing corrosion control or source water treatment, shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of Section 4 or 6 of this administrative regulation for failure to install source water or corrosion control treatment, the cabinet may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under Section 9(4)(b) of this administrative regulation has passed.

(2) A system shall replace annually at least seven (7) percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place when the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under Section 9(1) of this administrative regulation. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in subsection (1) of this section.

(3) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to Section 9(2)(c) of this administrative regulation, is less than or equal to 0.015 mg/l.

(4) A water system shall replace the entire service line up to the building inlet, unless it demonstrates to the satisfaction of the cabinet under subsection (5) of this section that it controls less than the entire service line. If the water system controls less than the entire service line, the system shall replace the portion of the line which the cabinet determines is under the system's control. The system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the residents that the system will collect a first flush tap water sample after partial replacement of the service line is completed if a resident so desires. If a resident accepts the offer, the system shall collect the sample and report the results to the resident within fourteen (14) days following partial lead service line replacement.

(5) A water system shall be presumed to control the entire lead service line up to the building inlet, unless the system demonstrates to the satisfaction of the cabinet, in a letter submitted under Section 13(5)(d) of this administrative regulation, that it does not have any of the following forms of control over the entire line (as established by applicable legal authority): authority to set standards for construction, repair, or maintenance of the line; authority to replace, repair, or maintain the service line; or ownership of the service line. The cabinet shall review the information supplied by the system and determine if the system controls less than the entire service line and, if the system controls less than the entire service line, shall determine the extent of the system's control. The cabinet's determination shall be in writing and explain the basis for its decision.

(6) A system shall replace lead service lines on a shorter schedule than that required elsewhere in this section, taking into account the number of lead service lines in the system, if a shorter replacement schedule is feasible. The cabinet shall make the feasibility determination and set the replacement schedule in writing and notify the system of its finding within six (6) months after the system is triggered into lead service line replacement based on monitoring referenced in subsection (1) of this section.

(7) A system may cease replacing lead service lines if first draw samples collected pursuant to Section 9(2)(b) of this administrative regulation meet the lead action level during each of two (2) consecutive monitoring periods and the system submits the results to the cabinet. If the first draw tap samples in the water system thereafter exceed the lead action level, the system shall recommence replacing lead service lines pursuant to subsection (2) of this section.

(h) To demonstrate compliance with subsections (1) to (4) of this section, a system shall report to the cabinet the information specified in Section 13(5) of this administrative regulation.

Section 8. Public Education and Supplemental Monitoring Requirements. A water system that exceeds the lead action level, based on tap water samples collected in accordance with Section 9 of this administrative regulation, shall deliver the public education materials contained in subsections (1) and (2) of this section in accordance with the requirements of subsection (3) of this section.

(1) Content of written materials. A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons.

(a) Introduction. The United States Environmental Protection Agency (EPA) and {insert name of water supplier} are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of fifteen (15) parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by {insert date when corrosion control will be completed for your system}. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than fifteen (15) ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at {insert water system's phone number}. This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(b) Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination - like dirt and dust - that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(c) Lead in drinking water. 1. Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

2. Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than two-tenths (0.2) percent lead, and restricted the lead content of faucets, pipes and other plumbing materials to eight and zero-tenths (8.0) percent.

3. When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(d) Steps you Can take in the home to reduce exposure to lead in drinking water.

1. Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call {insert phone number of water system}.

2. If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

a. Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six (6) hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about fifteen (15) to thirty (30) seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one (1) minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one (1) or two (2) gallons of water and costs less than {insert a cost estimate based on flushing two (2) times a day for thirty (30) days} per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

b. Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

c. Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from three (3) to five (5) minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

d. If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your Kentucky Department for Environmental Protection about the violation.

e. Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the Kentucky Department for Housing, Building and Construction. A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than fifteen (15) ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the line. If the line is only partially controlled by the {insert name of the city, county, or water system that controls the line}, we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

f. Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

3. The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of fifteen (15) ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

a. Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

b. Purchase bottled water for drinking and cooking.

4. You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

a. {Insert the name of city or county department of public utilities} at {insert phone number} can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

b. {Insert the name of city or county department that issues building permits} at {insert phone number} can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

c. The Cabinet for Human Resources at (502) 564-3970 or the {insert the name of the city or county health department} at {insert phone number} can provide you with information about the health effects of lead and how you can have your child's blood tested.

5. The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. {Insert names and phone numbers of at least two (2) laboratories}.

(2) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(a) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for {insert free or $ per sample}. You can contact the {insert the name of the city or water system} for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(b) To have your water tested for lead, or to get more information about this public health concern, please call {insert the phone number of the city or water system}.

(3) Delivery of a public education program.

(a) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate languages.

(b) A community water system that fails to meet the lead action

level on the basis of tap water samples collected in accordance with Section 9 of this administrative regulation shall, within sixty (60) days:

1. Insert notices in each customer's water utility bill containing the information in subsection (1) of this section, along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

2. Submit the information in subsection (1) of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

3. Deliver pamphlets or brochures that contain the public education materials in subsection (1)(b) and (d) of this section to facilities and organizations, including the following:

a. Public schools or local school boards;

b. City or county health department;

c. Women, infants, and children and head start programs whenever available;

d. Public and private hospitals and clinics;

e. Pediatricians;

f. Family planning clinics; and

g. Local welfare agencies.

4. Submit the public service announcement in subsection (2) of this section to at least five (5) of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(c) A community water system shall repeat the tasks contained in paragraph (b)1., 2., and 3. of this subsection every twelve (12) months, and the tasks contained in paragraph (b)4. of this subsection every six (6) months for as long as the system exceeds the lead action level.

(d) Within sixty (60) days after it exceeds the lead action level, a nontransient noncommunity water system shall deliver the public education materials contained in subsection (1)(a), (b) and (d) of this section as follows:

1. Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

2. Distribute informational pamphlets or brochures on lead in drinking water to each person served by the nontransient noncommunity water system.

(e) A nontransient noncommunity water system shall repeat the tasks contained in paragraph (d) of this subsection at least once during each calendar year in which the system exceeds the lead action level.

(f) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six (6) month monitoring period conducted pursuant to Section 9 of this administrative regulation. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(4) Supplemental monitoring and notification of results. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with Section 9 of this administrative regulation shall offer to sample or have sampled the tap water of any customer who requests it and to arrange, at the customer's or its own expense, for the requested sampling to take place. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

Section 9. Monitoring Requirements for Lead and Copper in Tap Water. (1) Sample site location.

(a) By the applicable date for commencement of monitoring under subsection (4)(a) of this section, each water system shall complete a materials evaluation of its distribution system to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in subsection (3) of this section. All sites from which first-draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(b) A water system shall use the information on lead, copper, and galvanized steel that it is required to collect under 401 KAR 8:350, Section 1(6)(a) when conducting a materials evaluation. When an evaluation of the information collected pursuant to 401 KAR 8:350 is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in this subsection, the water system shall review the sources of information listed below to identify a sufficient number of sampling sites. In addition, the system shall seek to collect the information listed below where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

1. All plumbing codes, permits, and records in the files of the building department which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

2. All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

3. All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(c) Tier 1 samplings sites. 1. The sampling sites selected for a community water system's sampling pool ("Tier 1 sampling sites") shall consist of single family structures that:

a. Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

b. Are served by a lead service line.

2. When multiple-family residences comprise at least twenty (20) percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(d) Any community water system with insufficient Tier 1 sampling sites shall complete its sampling pool with Tier 2 sampling sites, consisting of buildings, including multiple-family residences that:

1. Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

2. Are served by a lead service line.

(e) Any community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with "Tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983.

(f) The Tier 1 sampling sites selected for a nontransient noncommunity water system shall consist of buildings that:

1. Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

2. Are served by a lead service line.

(g) A nontransient noncommunity water system with insufficient Tier 1 sites that meet the targeting criteria in paragraph (f) of this subsection shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

(h) Any water system whose sampling pool does not consist exclusively of Tier 1 sites shall demonstrate in a letter submitted to the cabinet under Section 13(1)(b) of this administrative regulation why a review of the information listed in paragraph (b) of this subsection was inadequate to locate a sufficient number of Tier 1 sites. Any community water system which includes Tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of Tier 1 and Tier 2 sampling sites.

(i) Any water system whose distribution system contains lead service lines shall draw fifty (50) percent of the samples it collects

during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and fifty (50) percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter submitted to the cabinet under Section 13(1)(d) of this administrative regulation why the system was unable to locate a sufficient number of the sites. Such a water system shall collect first draw samples from all of the sites identified as being served by the lines.

(2) Sample collection methods. (a) All tap samples for lead and copper collected in accordance with this administrative regulation, with the exception of lead service line samples collected under Section 7(3) of this administrative regulation, shall be first-draw samples.

(b) Each first-draw tap sample for lead and copper shall be one (1) liter in volume and shall have stood motionless in the plumbing system of each sampling site for at least six (6) hours. First- draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for consumption. First-draw samples may be collected by the system or the system may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. Acidification of first-draw samples may be performed up to fourteen (14) days after the sample is collected. If the sample is not acidified immediately after collection, then the sample shall stand in the original container for at least twenty-eight (28) hours after acidification. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(c) Each service line sample shall be one (1) liter in volume and shall have stood motionless in the lead service line for at least six (6) hours. Lead service line samples shall be collected in one (1) of the following three (3) ways:

1. At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

2. Tapping directly into the lead service line; or

3. If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(d) A water system shall collect each first-draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(3) Number of samples. Water systems shall collect at least one (1) sample during each monitoring period specified in subsection (4) of this section from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under subsection (4)(d) of this section may collect one (1) sample from the number of sites specified in the second column below during each monitoring period specified in subsection (4)(d) of this section.

System Size (# People Served)	# of sites (Standard Monitoring)	# of sites (Reduced Monitoring)
greater than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
less than or equal to 100	5	5

(4) Timing of monitoring.

(a) Initial tap sampling. The first six (6) month monitoring period for small, medium-size and large systems shall begin on the following dates:

System Size (# People Served)	First Six (6) Month Monitoring Period Begins On
greater than 50,000	January 1, 1992
3,301 to 50,000	July 1, 1992
less than or equal to 3,300	July 1, 1993

1. All large systems shall monitor during two (2) consecutive six (6) month periods.

2. All small and medium-size systems shall monitor during each six (6) month monitoring period until:

a. The system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under Section 4 of this administrative regulation, in which case the system shall continue monitoring in accordance with paragraph (b) of this subsection; or

b. The system meets the lead and copper action levels during two (2) consecutive six (6) month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (d) of this subsection.

(b) Monitoring after installation of corrosion control and source water treatment.

1. Any large system which installs optimal corrosion control treatment pursuant to Section 4(4)(d) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 4(4)(e) of this administrative regulation.

2. Any small or medium-size system which installs optimal corrosion control treatment pursuant to Section 4(5)(e) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 4(5)(f) of this administrative regulation.

3. Any system which installs source water treatment pursuant to Section 6(1)(c) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 6(1)(d) of this administrative regulation.

(c) After the cabinet specifies the values for water quality control parameters under Section 5(6) of this administrative regulation, the system shall monitor during each subsequent six (6) month monitoring period, with the first monitoring period to begin on the date the cabinet specifies the optimal values under Section 5(6) of this administrative regulation.

(d) Reduced monitoring. 1. A small or medium-size water system that meets the lead and copper action levels during each of two (2) consecutive six (6) month monitoring periods may reduce the number of samples in accordance with subsection (3) of this section, and reduce the frequency of sampling to once per year.

2. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 5(6) of this administrative regulation during each of two (2) consecutive six (6) month monitoring periods may request that the cabinet allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with subsection (3) of this section. The cabinet shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The cabinet shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling become

available.

3. A small or medium-size water system that meets the lead and copper action levels during three (3) consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three (3) years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 5(6) of this administrative regulation during three (3) consecutive years of monitoring may request that the cabinet allow the system to reduce the frequency of monitoring from annually to once every three (3) years. The cabinet shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The cabinet shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

4. A water system that reduces the number and frequency of sampling shall collect the samples from sites included in the pool of targeted sampling sites identified in subsection (1) of this section. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

5. A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance paragraph (c) of this subsection and collect the number of samples specified for standard monitoring under subsection (3) of this section. The system shall also conduct water quality parameter monitoring in accordance with Section 10(2), (3), or (4) of this administrative regulation, as appropriate, during the monitoring period in which it exceeded the action level. Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality control parameters specified by the cabinet under Section 5(6) of this administrative regulation shall resume tap water sampling in accordance with paragraph (c) of this subsection and collect the number of samples specified for standard monitoring under subsection (3) of this section.

(5) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the cabinet in making any determinations (i.e., calculating the ninetieth (90th) percentile lead or copper level) under this administrative regulation.

Section 10. Monitoring Water Quality Parameters. All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section.

(1) General requirements.

(a) Sample collection methods.

1. Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under Section 9(1) of this administrative regulation.

2. Samples collected at the entry points to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one (1) source and the sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(b) Number of samples.

1. Public water systems shall collect two (2) tap samples for applicable water quality parameters during each monitoring period specified under subsections (2) to (5) of this section from the following number of sites.

System Size (# People Served)	# of Sites For Water Quality Parameters
greater than 100,000	25
10,001 to 100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
less than or equal to 100	1

2. Public water systems shall collect two (2) samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in subsection (2) of this section. During each monitoring period specified in subsections (3) to (5) of this section, public water systems shall collect one (1) sample for each applicable water quality parameter at each entry point to the distribution system.

(2) Initial sampling. All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six (6) month monitoring period specified in Section 9(4)(a) of this administrative regulation. All small and medium-size systems shall measure the applicable water quality parameters at the tap and at each entry point to the distribution system during each six (6) month monitoring period specified in Section 9(4)(a) of this administrative regulation during which the system exceeds the lead or copper action level:

(a) pH;

(b) Alkalinity;

(c) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(d) Silica, when an inhibitor containing a silicate compound is used;

(e) Calcium;

(f) Conductivity; and

(g) Water temperature.

(3) Monitoring after installation of corrosion control. A large system which installs optimal corrosion control treatment pursuant to Section 4(4)(d) of this administrative regulation shall measure the water quality parameters at the locations and frequencies specified below during each six (6) month monitoring period specified in Section 9(4)(b)1 of this administrative regulation. A small or medium-size system which installs optimal corrosion control treatment shall conduct this monitoring during each six (6) month monitoring period specified in Section 9(4)(b)2 of this administrative regulation in which the system exceeds the lead or copper action level.

(a) At taps, two (2) samples for:

1. pH;

2. Alkalinity;

3. Orthophosphate, when an inhibitor containing a phosphate compound is used;

4. Silica, when an inhibitor containing a silicate compound is used; and

5. Calcium, when calcium carbonate stabilization is used as a part of corrosion control.

(b) At each entry point to the distribution system, one (1) sample every two (2) weeks (bi-weekly) for:

1. pH;

2. When alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

3. When a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica, whichever is applicable.

(4) Monitoring after water quality parameter values for optimal corrosion control are specified. After the cabinet specifies the values for applicable water quality control parameters reflecting optimal

corrosion control treatment under Section 5(6) of this administrative regulation, all large systems shall measure the applicable water quality parameters in accordance with subsection (3) of this section during each monitoring period specified in Section 9(4)(c) of this administrative regulation. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in Section 9(4)(c) of this administrative regulation in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than three (3) days after the first sample is taken. If a confirmation sample is taken, the result shall be averaged with the first sampling result and the average shall be used for any compliance determinations under Section 5(7) of this administrative regulation. The cabinet may delete results of obvious sampling errors from this calculation.

(5) Reduced monitoring. (a) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two (2) consecutive six (6) month monitoring periods under subsection (4) of this section shall continue monitoring at the entry points to the distribution system as specified in subsection (3)(b) of this section. The system may collect two (2) tap samples for applicable water quality parameters from the following reduced number of sites during each six (6) month monitoring period:

System Size (# People Served)	Reduced # of Sites for Water Quality Parameters
greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
less than or equal to 100	1

(b) A water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 5(6) of this administrative regulation during three (3) consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (a) of this subsection from every six (6) months to annually. A water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 5(6) of this administrative regulation during three (3) years of annual monitoring under this subsection may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (a) of this subsection from annually to every three (3) years.

(c) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(d) A water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the cabinet under Section 5(6) of this administrative regulation shall resume tap water sampling in accordance with the number and frequency requirements in subsection (4) of this section.

(6) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the cabinet in making any determinations (i.e., determining concentrations of water quality parameters) under this section or Section 5 of this administrative regulation.

Section 11. Monitoring Requirements for Lead and Copper in Source Water. (1) Sample location, collection methods, and number of samples.

(a) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with Section 9 of this administrative regulation shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples, and collection methods specified in 401 KAR 8:250, Section 1(1) to (4). The timing of sampling for lead and copper shall be in accordance with subsections (2) and (3) of this section.

(b) If the results of sampling indicate an exceedance of maximum permissible source water levels established under Section 6(2)(d) of this administrative regulation, the cabinet may require the water system to collect one (1) additional sample as soon as possible after the initial sample was taken (but not to exceed two (2) weeks) at the same sampling point. If a confirmation sample required by the cabinet is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the maximum permissible levels specified by the cabinet. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the Practical Quantitation Limit (PQL) shall either be considered as the measured value or be considered one-half (1/2) the PQL.

(2) Monitoring frequency after system exceeds tap water action level. A public water system which exceeds the lead or copper action level at the tap shall collect one (1) source water sample from each entry point to the distribution system within six (6) months after the exceedance.

(3) Monitoring frequency after installation of source water treatment. A public water system which installs source water treatment pursuant to Section 6(1)(c) of this administrative regulation shall collect an additional source water sample from each entry point to the distribution system during two (2) consecutive six (6) month monitoring periods by the deadline specified in Section 6(1)(d) of this administrative regulation.

(4) Monitoring frequency after maximum permissible source water levels are specified by the cabinet or the cabinet determines that source water treatment is not needed. (a) A system shall monitor at the frequency specified below if the cabinet specifies maximum permissible source water levels under Section 6(2)(d) of this administrative regulation or determines that the system is not required to install source water treatment under Section 6(2)(b) of this administrative regulation.

1. A water system using only groundwater shall collect samples once during the compliance period in effect when the applicable cabinet determination under this paragraph is made. The system shall collect samples once during each subsequent compliance period.

2. A water system using surface water, or a combination of surface and groundwater, shall collect samples once during each year: the first annual monitoring period shall begin on the date on which the applicable determination is made under this paragraph.

(b) A system is not required to conduct source water sampling for lead or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (a) of this subsection.

(5) Reduced monitoring frequency.

(a) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead or copper concentrations specified by the cabinet in Section 6(2)(d) of this administrative regulation during at least three (3) consecutive compliance periods under subsection (4)(a) of this section may reduce the monitoring frequency for lead or copper to once during each nine (9) year compliance cycle.

(b) A water system using surface water, or a combination of surface and groundwater, which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by

the cabinet in Section 6(2)(d) of this administrative regulation for at least three (3) consecutive years may reduce the monitoring frequency in subsection (4)(a) of this section to once during each nine (9) year compliance cycle.

(c) A water system that uses a new source of water is not eligible for reduced monitoring for lead or copper until concentrations in samples collected from the new source during three (3) consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the cabinet in Section 6(1)(e) of this administrative regulation.

Section 12. Analytical Methods. Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted in accordance with 40 CFR 141.89(1993), herein adopted without change.

Section 13. All water systems shall report all of the following information to the cabinet in accordance with this section.

(1) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

(a) A water system shall report the information specified below for all tap water samples within the first ten (10) days following the end of each applicable monitoring period specified in Sections 9, 10, and 11 of this administrative regulation (i.e., every six (6) months, annually, or every three (3) years):

1. The results of all tap samples for lead and copper including the location of each site and the criteria under Section 9(1)(c), (d), (e), (f), and (g) of this administrative regulation under which the site was selected for the system's sampling pool;

2. A certification that each first-draw sample collected by the water system is one (1) liter in volume and, to the best of the knowledge of the water system, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six (6) hours;

3. Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of the proper sampling procedures specified in Section 9(2)(b) of this administrative regulation;

4. The ninetieth (90th) percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period, calculated in accordance with Section 3(4)(c) of this administrative regulation;

5. With the exception of initial tap sampling conducted pursuant to Section 9(4)(a) of this administrative regulation, the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

6. The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under Section 10(2) to (5) of this administrative regulation; and

7. The results of all samples collected at the entry point to the distribution system for applicable water quality parameters under Section 10(2) to (5) of this administrative regulation.

(b) By the applicable date in Section 9(4)(a) of this administrative regulation for commencement of monitoring, each community water system which does not complete its targeted sampling pool with Tier 1 sampling sites meeting the criteria in Section 9(1)(c) of this administrative regulation shall send a letter to the cabinet justifying its selection of Tier 2 or Tier 3 sampling sites under Section 9(1)(d) or (e) of this administrative regulation.

(c) By the applicable date in Section 9(4)(a) of this administrative regulation for commencement of monitoring, each nontransient, noncommunity water system which does not complete its sampling pool with Tier 1 sampling sites meeting the criteria in Section 9(1)(f) of this administrative regulation shall send a letter to the cabinet justifying its selection of sampling sites under Section 9(1)(g) of this administrative regulation.

(d) By the applicable date in Section 9(4)(a) of this administrative regulation for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by the lines required under Section 9(1)(i) of this administrative regulation shall send a letter to the cabinet demonstrating why it was unable to locate a sufficient number of the sites based upon the information listed in Section 9(1)(b) of this administrative regulation.

(e) Each water system that requests a reduction in the number and frequency of sampling shall submit to the cabinet the information required under Section 9(4)(d) of this administrative regulation.

(2) Source water monitoring reporting requirements.

(a) A water system shall submit to the cabinet the sampling results for all source water samples collected in accordance with Section 11 of this administrative regulation within the first ten (10) days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in Section 11 of this administrative regulation.

(b) With the exception of the first round of source water sampling conducted pursuant to Section 11(2) of this administrative regulation, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(3) Corrosion control treatment reporting requirements. By the applicable dates under Section 4 of this administrative regulation, systems shall submit the following information to the cabinet:

(a) For systems demonstrating that they have already optimized corrosion control, information required in Section 4(2)(b) or (c) of this administrative regulation;

(b) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under Section 5(1) of this administrative regulation;

(c) For systems required to evaluate the effectiveness of corrosion control treatments under Section 5(3) of this administrative regulation, the information required by that subsection; and

(d) For systems required to install optimal corrosion control approved by the cabinet under Section 5(4) of this administrative regulation, a letter certifying that the system has completed installing that treatment.

(4) Source water treatment reporting requirements. By the applicable dates in Section 6 of this administrative regulation, public water systems shall submit the following information to the cabinet:

(a) If required under Section 6(2)(a) of this administrative regulation, their recommendation regarding source water treatment; and

(b) For systems required to install source water treatment under Section 6(2)(b) of this administrative regulation, a letter certifying that the system has completed installing the treatment approved or designated by the cabinet within twenty-four (24) months after the cabinet approves or designates the treatment.

(5) Lead service line replacement reporting requirements. Systems shall report the following information to the cabinet to demonstrate compliance with the requirements of Section 7 of this administrative regulation:

(a) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 7(1) of this administrative regulation, the system shall demonstrate in writing to the cabinet that it has conducted a materials evaluation, including the evaluation in Section 9(1) of this administrative regulation, to identify the initial number of lead service lines in its distribution system, and shall provide the cabinet with the system's schedule for replacing annually at least seven (7) percent of the initial number of lead service lines in its distribution system.

(b) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 7(1) of this administrative regulation, and every twelve (12) months thereafter, the system shall demonstrate to the cabinet in writing that the system has either:

1. Replaced in the previous twelve (12) months at least seven (7) percent of the initial lead service lines (or a greater number of lines specified by the cabinet pursuant to Section 7(6) of this administrative regulation) in its distribution system; or

2. Conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line, taken pursuant to Section 9(2)(c) of this administrative regulation, is less than or equal to 0.015 mg/l. In these cases, the total number of lines replaced or which meet the criteria in Section 7(3) of this administrative regulation shall equal at least seven (7) percent of the initial number of lead lines identified under subsection (1) of this section (or the percentage specified by the cabinet pursuant to Section 7(6) of this administrative regulation).

(c) The annual letter submitted to the cabinet under paragraph (b) of this subsection shall contain the following information:

1. The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

2. The number and location of each lead service line replaced during the previous year of the system's replacement schedule; and

3. If measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(d) As soon as practicable, but no later than three (3) months after a system exceeds the lead action level in sampling referred to in Section 7(1) of this administrative regulation, any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to Section 7(4) of this administrative regulation shall submit a letter to the cabinet describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system's control over the service lines and the extent of the system's control.

(6) Public education program reporting requirements. By December 31 of each year, any water system that is subject to the public education requirements in Section 8 of this administrative regulation shall submit a letter to the cabinet demonstrating that the system has delivered the public education materials that meet the content requirements in Section 8(1) and (2) of this administrative regulation and the delivery requirements in Section 8(3) of this administrative regulation. This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter required by this paragraph annually for as long as it exceeds the lead action level.

(7) Reporting of additional monitoring data. A system which collects sampling data in addition to that required by this administrative regulation shall report the results to the cabinet by the end of the applicable monitoring period, under Sections 9, 10, and 11 of this administrative regulation, during which the samples are collected.

Section 14. Recordkeeping Requirements. Any system subject to this administrative regulation shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, cabinet determinations, and any other information required by Sections 4 through 11 of this administrative regulation. Each water system shall retain the records required by this section for no fewer than twelve (12) years.

Section 15. Compliance for Systems Serving Less Than or Equal to 3,300 Persons. (1) Notwithstanding any other provision of this administrative regulation, water systems serving less than or equal to 3,300 persons shall be deemed by the cabinet to be in compliance with this administrative regulation if, within eight (8) months of written notification by the cabinet of monitoring requirements, results of the monitoring are received by the cabinet. Public water systems serving less than or equal to 3,300 persons shall comply with all of the above requirements of this administrative regulation on or before deadlines established by the cabinet. The deadlines shall be based on the initial monitoring and shall be consistent with the time-frames contained within Sections 3 through 14 of this administrative regulation.

(2) A small water system shall begin to monitor for lead and copper no later than January 1, 1998, and shall report to the cabinet the results of six (6) months of monitoring data on or before July 10, 1998.

(3) Nothing in this section relieves public water systems of any applicable requirement of federal regulations.

[~~Section 2. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This administrative regulation will apply to approximately 534 community water systems and 166 nontransient noncommunity water systems. These numbers may vary from month to month. The number of samples required varies from a minimum of five to a maximum of 100 depending on population.

(a) Direct and indirect costs or savings to those affected: This administrative regulation will require monitoring for lead and copper. If a system exceeds the action level, engineering studies may be needed to determine optimum corrosion control water quality parameters, and analysis for lead or copper in source water. These studies could cost from $3,000 to $20,000 depending on the size of the system, and depth of analysis required. If, after steps to optimize corrosion control, stabilize water quality parameters and source water control have been taken, the water system continues to exceed the "action level" for lead or copper, lead service line replacement may

be required. Replacing a service line could cost from $300 to $1,000 depending on length, and difficulty. Total cost will depend on the size of the system. Water systems will have up to 15 years to complete this replacement. Many water companies have been replacing lead service lines either on a regular basis or when they find one, for some time now.

1. First year: In the first year of this administrative regulation water systems will monitor for lead and copper.

2. Continuing costs or savings: If lead and copper contamination does not exceed the "action level" only monitoring will continue. If a public water system exceeds the action level an escalating series of remedial treatments must be employed until monitoring once again shows the system's lead and copper contamination falls below the "action level". If the systems lead and copper contamination stays below the "action level" monitoring may eventually be reduced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Nationally, tests thus far have shown that about 20% of public water systems exceed the action level. Thus far this has not been true in Kentucky. Large and medium water systems have been tested and have not exceeded the "action level". Testing has been conducted on systems serving as few as 2,500 persons and no action level has been exceeded, however, not all data on these small systems are in.

(b) Reporting and paperwork requirements: Public Water systems must report monitoring data to the Cabinet. If an action level is exceeded, water systems must submit a large field of action plans for reduced corrosivity, service line replacement, water quality parameter testing and follow-up studies for the Cabinet's review and approval. These studies could cost from $3,000 to $20,000 depending on the size of the system and complexity of the study.

(2) Effects on the promulgating administrative body: This administrative regulation will have significant effects on the Cabinet.

(a) Direct and indirect costs or savings: Additional personnel may be necessary to enforce this administrative regulation. The Division has requested about one and one half new persons to administer this regulation. In addition, money has been requested for third party contracts to provide technical assistance, some of which would be used for lead and copper. Each person year costs about $35,000.

1. First year: Currently, the Cabinet has two people dedicated to lead and copper. The Cabinet is currently administering this administrative regulation for large and medium water systems (about 195), through an enforcement agreement with EPA. The Cabinet has begun dealing with small systems.

2. Continuing costs or savings: At its peak, the Cabinet estimates that additional people may be needed to administer this administrative regulation.

3. Additional factors increasing or decreasing costs: The Cabinet estimates that additional people may be needed to administer this administrative regulation. The Cabinet believes the small systems will have the most significant impact on personnel requirements, but currently is only beginning to deal with these systems.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements are significant both from water systems to the Cabinet and from the Cabinet to EPA. These requirements escalate as water systems exceed the "action level".

(3) Assessment of anticipated effect on state and local revenues: No affect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation directly tracks federal requirements. Alternatives to this administrative regulation would make Kentucky inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, duplicates, or overlaps this administrative regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This administrative regulation takes into account the size and type of public water systems, allowing smaller systems more time to comply.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will require public water systems to monitor for lead and copper contamination and provide remediation if the contaminants are found. The costs of this administrative regulation would ordinarily be passed through to consumers. However, a local government which owns a public water system could elect to absorb some or all of this cost.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 141 as amended at Federal Register 26547, June 7, 1991.

2. State compliance standards. This administrative regulation sets out requirements for lead and copper contamination and remediation.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR Part 141 sets out requirements for lead and copper contamination and remediation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:400. Synthetic organic chemicals.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, [~~PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,~~] 42 USCA 300f, 300g, 300j, and 40 CFR 141.24(e), 141.24(h)(12), (13) (1993) [~~(g)(10), (11), (18)~~]

NECESSITY AND FUNCTION: KRS Chapter 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of

water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation provides maximum contaminant levels and sampling and analytical requirements for certain organic chemicals. [~~This regulation repeals and replaces Section 8 of 401 KAR 6:015, with no substantial changes.~~]

Section 1. Synthetic Organic Chemicals Sampling and Analytical Requirements. (1) Monitoring of endrin for purposes of determining compliance with the maximum contaminant level listed in Section 4 of this administrative regulation shall be conducted as follows:

(a) For all community water systems utilizing surface water sources, analysis shall be conducted when other synthetic organic chemicals are analyzed by the system pursuant to the three (3) year compliance period beginning January 1, 1993. Samples analyzed shall be collected during the period of the year designated by the cabinet as the period when contamination by pesticides is most likely to occur. These analyses shall be repeated at intervals specified by the cabinet but not less frequently than at three (3) year intervals.

(b) For community water systems utilizing only groundwater sources, analyses shall be completed by those systems as specified by the cabinet.

(c) The cabinet shall determine compliance or initiate enforcement action based upon analytical results and other information compiled by cabinet personnel.

(2) If the result of an analysis made pursuant to subsection (1) of this section indicates that the level of endrin exceeds the maximum contaminant level for endrin listed in Section 4 of this administrative regulation, the supplier of water shall report to the cabinet within seven (7) days and perform three (3) additional analyses within one (1) month.

(3) When the average of four (4) analyses made pursuant to subsection (2) of this section, rounded to the same number of significant figures as the maximum contaminant level for endrin, exceeds the maximum contaminant level for endrin, the supplier of water shall report to the cabinet pursuant to 401 KAR 8:020, Section 2(7) and give notice to the public pursuant to 401 KAR 8:070. Monitoring after public notification shall be at a frequency designated by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action becomes effective.

(4) For the initial analysis required by subsection (1)(a) and (b) of this section, data for surface water acquired within one (1) year prior to the effective date of this administrative regulation and data for groundwater acquired within three (3) years prior to the effective date of this administrative regulation may be substituted at the discretion of the cabinet.

Section 2. Analysis to determine compliance with the maximum contaminant level for endrin in Section 4 of this administrative regulation shall be performed in accordance with 40 CFR 141.24(e) (1993), hereby adopted without change.

Section 3. Except for aldicarb, aldicarb sulfoxide and aldicarb sulfone which shall be analyzed in accordance with 40 CFR 141.40, analysis of the contaminants listed in Section 4 of this administrative regulation for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For the purposes of this subsection, surface water systems include systems with a combination of surface and ground sources.

(3) If the system draws water from more than one (1) source and the sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Monitoring frequency:

(a) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in Section 4 of this administrative regulation during each compliance period beginning with the compliance period starting January 1, 1993.

(b) Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two (2) quarterly samples in one (1) year during each repeat compliance period.

(c) Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one (1) sample during each repeat compliance period.

(5) Each community and nontransient water system may apply to the cabinet for a waiver from the requirement of subsection (4) of this section. A system shall reapply for a waiver for each compliance period.

(6) A waiver may be granted by the cabinet, after evaluating the previous use, including transport, storage, or disposal, of the contaminant within the watershed or zone of influence of the system. If a determination by the cabinet reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(a) Previous analytical results;

(b) The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses;

(c) The environmental persistence and transport of the pesticide or PCBs;

(d) How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing;

(e) Elevated nitrate levels at the water supply source; and

(f) Use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

(7) If an organic contaminant listed in Section 4 of this administrative regulation is detected, pursuant to subsection (18) of this section, in any sample, then:

(a) Each system shall monitor quarterly at each sampling point which resulted in a detection.

(b) The cabinet may decrease the quarterly monitoring requirement specified in paragraph (a) of this subsection if it has determined that the system is reliably and consistently below the maximum

contaminant level. The cabinet shall not make this determination unless a groundwater system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(c) If the cabinet determines the system is reliably and consistently below the maximum contaminant level the cabinet may allow the system to monitor annually. Systems which monitor annually shall monitor during the quarter that previously yielded the highest analytical result.

(d) Systems which have three (3) consecutive annual samples with no detection of a contaminant may apply to the cabinet for a waiver as specified in subsections (5) and (6) of this section.

(e) If monitoring results in detection of one (1) or more of the related contaminants, aldicarb, aldicarb sulfone, aldicarb sulfoxide and heptachlor, or heptachlor epoxide, then subsequent monitoring shall include analyses for all related contaminants.

(8) Systems which exceed the maximum contaminant levels as set within Section 4 of this administrative regulation, as determined by subsection (11) of this section, shall monitor quarterly. After the analytical results from a minimum of four (4) quarterly samples indicate that the system is in compliance and the cabinet determines the system is reliably and consistently below the MCL, as specified in subsection (11) of this section, the system shall monitor at the frequency specified in subsection (7)(c) of this section.

(9) The cabinet may require a confirmation sample for positive or negative results. If a confirmation sample is required by the cabinet, the result shall be averaged with the first sampling result and the average used for the compliance determination specified in subsection (11) of this section. The cabinet may delete results of obvious sampling errors from this calculation.

(10) The total number of samples a system shall analyze may be reduced by the cabinet, by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, if the detection limit of the method used for analysis is less than one-fifth (1/5) of the MCL. Compositing of samples shall be performed in the laboratory and analyzed within fourteen (14) days of sample collection.

(a) If the concentration in the composite sample detects one (1) or more contaminants listed in Section 4 of this administrative regulation, then a follow-up sample shall be taken and analyzed within fourteen (14) days from each sampling point included in the composite.

(b) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these duplicates instead of resampling. The duplicate shall be analyzed and the results submitted to the cabinet within fourteen (14) days of collection.

(c) If the population served by the system is greater than 3,300 persons, then compositing may occur only at sampling points within a single system. In systems serving less than or equal to 3,300 persons, the cabinet may permit compositing among different systems if the five (5) sample limit is maintained.

(11) Compliance with Section 4 of this administrative regulation shall be based upon the analytical results obtained at each sampling point.

(a) For systems which are conducting monitoring at a frequency greater than annual, compliance shall be determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the maximum contaminant level, then the system shall be deemed to be out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system shall immediately be deemed to be out of compliance. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

(b). If monitoring is conducted annually, or less frequently, the system shall be deemed to be out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the cabinet, the determination of compliance shall be based on the average of two (2) samples.

(c) If a public water system has a distribution system separable from other parts of the distribution system with no inter-connections, the system may, with cabinet approval, give public notice to only that portion of the system which is out of compliance.

(12) Analysis for the contaminants listed in Section 4 of this administrative regulation shall be conducted in accordance with 40 CFR 141.24(h)(12)(1993), hereby adopted without change.

(13) Analysis for PCBs shall be conducted in accordance with 40 CFR 141.24(h)(13)(1993), hereby adopted without change.

(14) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this section, then systems may, with cabinet approval, use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(15) The cabinet may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source).

(16) The cabinet may determine compliance or initiate enforcement action based upon analytical results and other information compiled by cabinet personnel.

(17) Each public water system shall monitor when designated by the cabinet within each compliance period.

(18) Detection, as used in this section, shall be greater than or equal to the following concentrations for each contaminant:

Contaminant	Detection Limit in mg/l
Alachlor	0.0002
Aldicarb	0.0005
Aldicarb sulfoxide	0.0005
Aldicarb sulfone	0.0008
Atrazine	0.0001
Benzo(a)pyrene	0.00002
Carbofuran	0.0009
Chlordane	0.0002
Dalapon	0.001
Dibromochloropropane (DBCP)	0.00002
Di(2-ethylhexyl)adipate	0.0006
Di(2-ethylhexyl)phthalate	0.0006
Dinoseb	0.0002
Diquat	0.0004
2,4-D	0.0001
Endothall	0.009
Endrin	0.00001
Ethylene dibromide (EDB)	0.00001
Glyphosate	0.006
Heptachlor	0.00004
Heptachlor epoxide	0.00002
Hexachlorobenzene	0.0001
Hexachlorocyclopentadiene	0.0001
Lindane	0.00002
Methoxychlor	0.0001
Oxamyl	0.002
Picloram	0.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	0.0001
Pentachlorophenol	0.00004
Simazine	0.00007
Toxaphene	0.001
2,3,7,8-TCDD (Dioxin)	0.000000005
2,4,5-TP (Silvex)	0.0002

(19) Analysis under this administrative regulation shall only be conducted by laboratories that have received certification by EPA or

the cabinet. To receive certification to conduct analyses for the contaminants in Section 4 of this administrative regulation the laboratory shall:

(a) Analyze Performance Evaluation samples which include those substances provided by EPA's Environmental Monitoring and Support Laboratory or equivalent samples provided by the cabinet; and

(b) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limits (percent, unless otherwise noted)
DBPC	plus or minus 40
EDB	plus or minus 40
Alachlor	plus or minus 45
Atrazine	plus or minus 45
Benzo(a)pyrene	2 standard deviations
Carbofuran	plus or minus 45
Chlordane	plus or minus 45
Dalapon	2 standard deviations
Di(2-ethylhexyl)adipate	2 standard deviations
Di(2-ethylhexyl)phthalate	2 standard deviations
Dinoseb	2 standard deviations
Diquat	2 standard deviations
Endothall	2 standard deviations
Endrin	plus or minus 30
Glyphosate	2 standard deviations
Heptachlor	plus or minus 45
Heptachlor epoxide	plus or minus 45
Hexachlorobenzene	2 standard deviations
Hexachlorocyclopentadiene	2 standard deviations
Lindane	plus or minus 45
Methoxychlor	plus or minus 45
Oxamyl	2 standard deviations
PCBs (as Decachlorobiphenyl)	0 through 200
Picloram	2 standard deviations
Simazine	2 standard deviations
Toxaphene	plus or minus 45
Aldicarb	2 standard deviations
Aldicarb sulfoxide	2 standard deviations
Aldicarb sulfone	2 standard deviations
Pentachlorophenol	plus or minus 50
2,3,7,8-TCDD (Dioxin)	2 standard deviations
2,4-D	plus or minus 50
2,4,5-TP (Silvex)	plus or minus 50

Section 4. The following maximum contaminant levels for synthetic organic contaminants shall apply to community water systems and nontransient, noncommunity water systems:

CAS No.	Contaminant	MCL (mg/l)
(1) 15972-60-8	Alachlor	0.002
(2) 116-06-3	Aldicarb	0.003
(3) 1646-87-3	Aldicarb sulfoxide	0.004
(4) 1646-87-4	Aldicarb sulfone	0.003
(5) 1912-24-9	Atrazine	0.003
(6) 1563-66-2	Carbofuran	0.04
(7) 57-74-9	Chlordane	0.002
(8) 96-12-8	Dibromochloropropane	0.0002
(9) 94-75-7	2,4-D	0.07
(10) 106-93-4	Ethylene dibromide	0.00005
(11) 76-44-8	Heptachlor	0.0004
(12) 1024-57-3	Heptachlor epoxide	0.0002
(13) 58-89-9	Lindane	0.0002
(14) 72-43-5	Methoxychlor	0.04
(15) 1336-36-3	Polychlorinated biphenyls	0.0005
(16) 87-86-5	Pentachlorophenol	0.001
(17) 8001-35-2	Toxaphene	0.003
(18) 93-72-1	2,4,5-TP	0.05
(19) 50-32-8	Benzo(a)pyrene	0.0002
(20) 75-99-0	Dalapon	0.2
(21) 103-23-1	Di(2-ethylhexyl)adipate	0.4
(22) 117-81-7	Di(2-ethylhexyl)phthalate	0.006
(23) 88-85-7	Dinoseb	0.007
(24) 85-00-7	Diquat	0.02
(25) 145-73-3	Endothall	0.1
(26) 72-20-8	Endrin	0.002
(27) 1071-53-6	Glyphosate	0.7
(28) 118-74-1	Hexachlorobenzene	0.001
(29) 77-47-4	Hexachlorocyclopentadiene	0.05
(30) 23135-22-0	Oxamyl (Vydate)	0.2
(31) 1918-02-1	Picloram	0.5
(32) 122-34-9	Simazine	0.004
(33) 1746-01-6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}

Section 5. The following are hereby identified as the best available technology, treatment technique, or other means available for achieving compliance with the maximum contaminant level for the synthetic organic contaminants identified in Section 4 of this administrative regulation and volatile organic compounds identified in 401 KAR 8:420.

CAS No.	Chemical	GRANULATED ACTIVATED CARBON	PACKED TOWER AERATION	OXIDATION
15972-60-8	Alachlor	X		
116-06-3	Aldicarb	X		
1646-88-4	Aldicarb sulfone	X		
1646-87-3	Aldicarb sulfoxide	X		
1912-24-9	Atrazine	X		
71-43-2	Benzene	X	X	
1563-66-2	Carbofuran	X		
56-23-5	Carbon tetrachloride	X	X	
57-74-9	Chlordane	X		
94-75-7	2,4-D	X		
96-12-8	Dibromochloropropane (DBCP)	X	X	
95-50-1	o-Dichlorobenzene	X	X	
107-06-2	1,2-Dichloroethane	X	X	
158-59-2	cis-1,2-Dichloroethylene	X	X	
158-60-5	trans-1,2-Dichloroethylene	X	X	

75-35-4	1,1-Dichloroethylene	X	X
78-87-5	1,2-Dichloropropane	X	X
106-93-4	Ethylene Dibromide (EDB)	X	X
100-41-4	Ethylbenzene	X	X
76-44-8	Heptachlor	X	
1024-57-3	Heptachlor epoxide	X	
58-89-9	Lindane	X	
72-43-5	Methoxychlor	X	
108-90-7	Monochlorobenzene	X	X
106-46-7	para-Dichlorobenzene	X	X
1336-36-3	Polychlorinated biphenyls (PCBs)		X
87-86-5	Pentachlorophenol	X	
100-42-5	Styrene	X	X
93-72-1	2,4,5-TP (Silver)	X	
127-18-4	Tetrachloroethylene	X	X
71-55-6	1,1,1-Trichloroethane	X	X
79-01-6	Trichloroethylene	X	X
108-88-3	Toluene	X	
8001-35-2	Toxaphene	X	X
75-01-4	Vinyl chloride		X
1330-20-7	Xylene	X	X
50-32-8	Benzo(a)pyrene	X	
75-99-0	Dalapon	X	
75-09-2	Dichloromethane		X
103-23-1	Di(2-ethylhexyl)adipate	X	X
117-81-7	Di(2-ethylhexyl)phthalate	X	
88-85-7	Dinoseb	X	
85-00-7	Diquat	X	
145-73-3	Endothall		X
72-20-8	Endrin		X
1071-53-6	Glyphosate		X
118-74-1	Hexachlorobenzene		X
77-47-3	Hexachlorocyclopentadiene	X	X
23135-22-0	Oxamyl (Vydate)	X	
1918-02-1	Picloram	X	
122-34-9	Simazine	X	
120-82-1	1,2,4-Trichlorobenzene	X	X
79-00-5	1,1,2-Trichloroethane	X	X
1746-01-6	2,3,7,8-TCDD (Dioxin)	X	

~~[Section 1. Organic Chemical Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Applicability. A community water system that obtains all or part of its water from surface water sources shall sample for organic chemicals and is subject to the provisions of this section. The cabinet may require a community water system which obtains its water from any groundwater source to sample for organic chemicals.~~

~~(2) Sampling frequency. Sampling for organic chemicals shall be performed no less than once every three (3) years, at a period of the year specified by the cabinet.~~

~~(3) Sampling points. The sampling point for the determination of organic chemicals shall be at any free flowing outlet of the distribution system.~~

~~(4) Maximum organic chemical limits. The following are the maximum contaminant levels for organic chemicals:~~

	Level, milligrams per liter
~~Chlorinated hydrocarbons:~~	
~~Endrin (1,2,3,4,10, 10 hexachloro 6,7 epoxy 1,4,4a,5,6,7,8,8a octa hydro 1,4 endo, endo 5,8 dimethano naphthalene)~~	~~0.0002~~
~~Lindane (1,2,3,4,5,6 hexachloro cyclohexane, gamma isomer).~~	~~0.004~~
~~Methoxychlor (1,1,1 Trichloro 2, 2 bis (p methoxyphenyl) ethane).~~	~~0.1~~
~~Toxaphene ($C_{10}H_{10}Cl_8$ Technical Chlorinated Camphene, 67 69 percent chlorine).~~	~~0.005~~
~~Chlorophenoxys:~~	
~~2,4 D, (2,4 Dichlorophenoxyacetic acid).~~	~~0.1~~
~~2,4,5 TP Silvex (2,4,5 Trichloro phenoxypropionic acid).~~	~~0.01~~

~~(5) Analytical methods. Analyses for organic chemicals shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency in accordance with 40 CFR 141.24(e) and (g) (10) (11) and (18) or by the cabinet.~~

~~(6) Organic chemical limit exceeded.~~

~~(a) If the results of an analysis for the organic chemicals listed above show that the maximum limits have been exceeded, the supplier of water shall report this information to the cabinet within seven (7) days and initiate three (3) additional analyses within one (1) month.~~

~~(b) When the average of the four (4) analyses made above, rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall report the violation to the cabinet and give the notice to the public specified in 401 KAR 8:070. Monitoring after public notification shall be at a frequency determined by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples, or until a monitoring schedule, as a condition to a variance, exemption or enforcement action, becomes effective.~~

~~Section 2. Variances and exemptions for organic chemicals shall be in accordance with 401 KAR 8:060 and in accordance with the provisions for variances for volatile organic chemicals as provided in 401 KAR 8:420, Section 8.~~

~~Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation will affect approximately 534 community and 166 nontransient non-community public water systems. This number may vary from month to month.

(a) Direct and indirect costs or savings to those affected: This regulation requires public water systems to monitor for certain synthetic organic chemicals as set forth in federal regulations published January 30, 1991 and July 17, 1992, within the next three years. These federal regulations are commonly referred to as Phase II and Phase V chemical regulations. Costs for the monitoring for the organic chemicals in this regulation in combination with other Phase II and Phase V regulations are estimated to be about $12,000 per system per year.

1. First year: Except for industrial, commercial, and federal facilities the Cabinet is currently undertaking to monitor for the first round of Phase II and Phase V chemicals for public water systems serving fewer than 10,000 people at no cost to the system. As long as no MCL is violated thereby triggering the need for best available technology, these public water systems may not incur any costs for the first round of monitoring. Industrial, commercial, and federal facilities and facilities serving over 10,000 people will incur monitoring costs of about $12,000 per year.

2. Continuing costs or savings: Continuing costs for monitoring after the first round will be the responsibility of the public water system. Check sample monitoring will also be the responsibility of the public water system. Depending on what chemicals are found and at what levels, monitoring may continue as often as quarterly or as seldom as every three years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If a maximum contaminant level is exceeded, the public water system will be required to install best available technology to remove the contaminant. These technologies can vary depending on the chemical which needs to be removed and the difficulty in removing it. The costs of the technology can also vary depending on the technology used and intensity of treatment.

(b) Reporting and paperwork requirements: Data generated from monitoring for organic chemicals will have to be submitted to the Cabinet by the public water system. In most cases this data will be submitted to the Cabinet by laboratories on behalf of public water systems.

(2) Effects on the promulgating administrative body: This regulation will require the promulgating administrative body to maintain and track the data submitted by public water systems relating to organic chemicals, as well as follow-up data submitted with any necessary enforcement action.

(a) Direct and indirect costs or savings: Manipulation of data will be managed by current staff.

1. First year: Because the Cabinet is conducting the first round of monitoring on behalf of most public water systems serving less than 10,000 persons, laboratory resources of the Cabinet will be drawn upon heavily to implement this regulation. Field personnel for the Division of Water will also be called upon heavily for collecting samples.

2. Continuing costs or savings: While data management and enforcement of this regulation will be handled by current staff with little disruption, laboratory services will require a reduction of laboratory resources available to other programs in the Department. Field personnel of the Division of Water will work sample collection into their current schedule.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: Data generated as a result of this regulation will be managed using current computer tracking programs and will be forwarded to the Environmental Protection Agency using currently available facilities.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no affect on state revenues. Public water systems owned by local governments will eventually have to pick up costs associated with this regulation although in most cases, costs will be passed through to water consumers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation tracks requirements of federal regulations. Alternatives to this regulation would make Kentucky's program inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No

statute, regulation, or policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to take into consideration different types of water systems and different possible contaminants and solutions.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None available

Expenditures (+/-): None available

Other Explanation: This regulation requires public water systems to conduct monitoring for certain organic chemicals. If an MCL is violated, the system would have to install best available technology to remove the contaminant. The costs of this regulation would likely be passed to the consumer of water. However, a local government which owns a public water system could elect to absorb these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.24 and 40 CFR 141.61 as amended at 56 Federal Register 3583 January 30, 1991, 56 Federal Register 30277 July 1, 1991, and 57 Federal Register 31841 July 17, 1992 establish certain minimum requirements for implementation of the federal Safe Drinking Water Act (SDWA). The SDWA does not require states to adopt the federal program, so there is no federal mandate. It does authorize states to apply for program delegation. This eliminates the need for dual federal and state programs.

2. State compliance standards. This regulation sets out monitoring and testing requirements, maximum contaminant levels and best available technology for certain synthetic organic chemicals.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations set forth monitoring and testing requirements, maximum contaminant levels and best available technology for certain synthetic organic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate to implement the federal SDWA. The Cabinet has implemented its state statutory authority in adopting this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:420. Volatile organic chemicals.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, [~~PL 93-523 The Safe Drinking Water Act as amended in 1986,~~] 40 CFR part 136, Appendix B (1993), 40 CFR 141.24 (1993) [~~(g)(10), (11), (15)~~], 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS Chapter 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation sets forth monitoring and testing requirements, maximum contaminant levels, and treatment technologies for certain volatile organic chemicals (VOCs), and is required to keep state administrative regulations "no less stringent than national primary drinking water regulations".

Section 1. Beginning with the initial compliance period, analysis of the contaminants listed in Section 3(1) of this administrative regulation for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment, hereafter called a sampling point. Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(2) Surface water systems, or combined surface and groundwater systems, shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment, hereafter called a sampling point. Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(3) If the system draws water from more than one (1) source and the sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in Section 3(1)(b) to (u) of this administrative regulation during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in Section 3(1)(a) to (h) of this administrative regulation and the monitoring for the contaminants listed in Section 3 (1)(i) to (u) of this administrative regulation as allowed in subsection (18) of this section, has been completed by December 31, 1992, and the system did not detect any contaminant listed in Section 3(1) of this administrative regulation, then each ground and surface water system shall take one (1) sample annually beginning with the initial compliance period.

(6) After a minimum of three (3) years of annual sampling, groundwater systems with no previous detection of any contaminant

listed in Section 3(1) of this administrative regulation, may be allowed by the cabinet, to take one (1) sample during each compliance period.

(7) Each community and nontransient groundwater system which does not detect a contaminant listed in Section 3(1)(a) through (u) of this administrative regulation may apply to the cabinet for a waiver from the requirements of subsections (5) and (6) of this section after completing the initial monitoring. For the purposes of this section, a contaminant shall be detected if it is measured at greater than or equal to 0.0005 mg/l. A waiver shall be effective for no more than six (6) years or two (2) compliance periods. The cabinet may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) The cabinet may grant a waiver after evaluating the following factors:

(a) Knowledge of previous use, including transport, storage, or disposal, of the contaminant within the watershed or zone of influence of the system. If a determination by the cabinet reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(b) If previous use of the contaminant is unknown or it has not been used previously, then the following factors shall be used to determine if a waiver may be granted.

1. Previous analytical results;

2. The proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities;

3. The environmental persistence and transport of the contaminants;

4. The number of persons served by the public water system and the proximity of a smaller system to a larger system; and

5. How well the water source is protected against contamination, such as whether it is a surface or groundwater system. Groundwater systems shall consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems shall consider watershed protection.

(9) As a condition of the waiver a groundwater system shall take one (1) sample at each sampling point during the time the waiver is effective (i.e., one (1) sample during two (2) compliance periods or six (6) years) and update its vulnerability assessment considering the factors listed in subsection (8) of this section. Based on this vulnerability assessment the cabinet shall reconfirm that the system is nonvulnerable. If the cabinet does not make this reconfirmation within three (3) years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in subsection (5) of this section.

(10) Each community and nontransient surface water system which does not detect a contaminant listed in Section 3(1)(a) to (u) of this administrative regulation may apply to the cabinet for a waiver from the requirements of subsection (5) of this section after completing the initial monitoring. Composite samples from a maximum of five (5) sampling points are allowed, if the detection limit of the method used for analysis is less than one-fifth (1/5) of the MCL. Systems meeting this criterion shall be determined by the cabinet to be nonvulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at a frequency specified by the cabinet.

(11) If a contaminant listed in Section 3 (1)(a) to (u) of this administrative regulation is detected at a level exceeding 0.0005 mg/l in any sample, then:

(a) The system shall monitor quarterly at each sampling point which resulted in a detection.

(b) The cabinet may decrease the quarterly monitoring requirement specified in paragraph (a) of this subsection if it determines that the system is reliably and consistently below the maximum contaminant level. The cabinet shall not make this determination unless a groundwater system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(c) If the cabinet determines that the system is reliably and consistently below the maximum contaminant level, the system may, with written approval from the cabinet, monitor annually. Systems which monitor annually shall monitor during the quarters which previously yielded the highest analytical result.

(d) Systems which have three (3) consecutive annual samples with no detection of a contaminant may apply to the cabinet for a waiver pursuant to subsection (7) of this section.

(e) Groundwater systems which have detected trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which the compound was detected. If the results of the first analysis do not detect vinyl chloride, the cabinet may reduce the quarterly monitoring frequency for vinyl chloride to one (1) sample during each compliance period. Surface water systems shall monitor for vinyl chloride as specified by the cabinet.

(12) Systems which violate the requirements of Section 3(1)(a) to (u) of this administrative regulation, as determined by subsection (15) of this section, shall monitor quarterly. If a minimum of four (4) consecutive quarterly samples demonstrate that the system is in compliance pursuant to subsection (15) of this section and the cabinet determines that the system is reliably and consistently below the maximum contaminant level, the system may, with written approval from the cabinet, monitor at the frequency and times specified in subsection (11)(c) of this section.

(13) A confirmation sample may be required for positive or negative results. If a confirmation sample is required by the cabinet, the result shall be averaged with the first sampling result and the average shall be used for the compliance determination as specified by subsection (15) of this section. The cabinet may delete results of obvious sampling errors from this calculation.

(14) The total number of samples a system shall analyze may be reduced by the cabinet, by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, if the detection limit of the method used for analysis is less than one-fifth (1/5) of the MCL. Compositing of samples shall be performed in the laboratory and shall be analyzed within fourteen (14) days of sample collection.

(a) If the concentration in the composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in Section 3 of this administrative regulation, then a follow-up sample shall be taken and analyzed within fourteen (14) days from each sampling point included in the composite.

(b) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicate shall be analyzed and the results reported to the cabinet within fourteen (14) days of collection.

(c) Compositing shall take place only at sampling points within a single system, unless the population served by the system is less than or equal to 3,300 persons. In systems serving less than or equal to 3,300 persons, compositing among different systems may be permitted if the five (5) sample limit is maintained.

(d) Compositing samples prior to Gas Chromatograph analysis.

1. Add five (5) ml or equal larger amounts of each sample (up to five (5) samples are allowed) to a twenty-five (25) ml glass syringe. Special precautions shall be taken to maintain zero headspace in the syringe.

2. The samples shall be cooled at four (4)°C during this step to minimize volatilization losses.

3. Mix well and draw out a five (5) ml aliquot for analysis.

4. Follow sample introduction, purging, and desorption steps described in the method set forth in 40 CFR 141.24(f)(16) (1993)

hereby adopted without change.

5. If less than five (5) samples are used for compositing, a proportionately small syringe may be used.

(e) Compositing samples prior to Gas Chromatograph/Mass Spectrometer analysis.

1. Inject five (5) ml or equal larger amounts of each aqueous sample (up to five (5) samples are allowed) into a twenty-five (25) ml purging device using the sample introduction technique described in the method.

2. The total volume of the sample in the purging device shall be twenty-five (25) ml.

3. Purge and desorb as described in the method set forth in 40 CFR 141.24(f)(16) (1993) hereby adopted without change.

(15) Compliance with Section 3(1)(a) to (u) of this administrative regulation shall be determined based upon the analytical results obtained at each sampling point.

(a) For systems which are conducting monitoring at a frequency greater than annual, compliance shall be determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system shall be deemed to be out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system shall immediately be deemed to be out of compliance.

(b) If monitoring is conducted annually, or less frequently, the system shall be deemed to be out of compliance if the level of a contaminant at any sampling point is greater than the maximum contaminant level. If a confirmation sample is required by the cabinet, the determination of compliance shall be based on the average of two (2) samples.

(c) If a public water system has a distribution system separable from other parts of the distribution system with no inter-connections, the system may, with the approval of the cabinet, give public notice to only that area served by that portion of the system which is out of compliance.

(16) Analysis for the contaminants listed in Section 3(1)(a) to (u) of this administrative regulation shall be conducted in accordance with 40 CFR 141.24(f)(16) (1993) hereby adopted without change.

(17) Analysis under this section shall be conducted only by laboratories that are certified by EPA or the cabinet according to the following conditions; laboratories may conduct sample analysis under provisional certification until January 1, 1996:

(a) To receive certification to conduct analyses for the contaminants in Section 3(1)(b) to (u) of this administrative regulation the laboratory shall:

1. Analyze Performance Evaluation samples which include contaminants set forth in Section 3(1)(b) to (u) of this administrative regulation and are provided by EPA's Environmental Monitoring Systems Laboratory or equivalent samples provided by the cabinet;

2. Achieve the quantitative acceptance limits under subparagraphs 3 and 4 of this paragraph for at least eighty (80) percent of the regulated organic chemicals listed in Section 3(1)(b) through (u) of this administrative regulation;

3. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus twenty (20) percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to ten-thousandths (0.010) mg/l;

4. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus forty (40) percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is less than ten-thousandths (0.010) mg/l; and

5. Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B to 40 CFR Part 136 (1993) hereby adopted without change.

(b) To receive certification for vinyl chloride, the laboratory shall:

1. Analyze Performance Evaluation samples provided by EPA's Environmental Monitoring Systems Laboratory or equivalent samples provided by the cabinet;

2. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus forty (40) percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

3. Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B to 40 CFR Part 136 (1993) hereby adopted without change; and

4. Obtain certification for the contaminants listed in Section 3(1)(b) through (u) of this administrative regulation.

(18) Monitoring data collected after January 1, 1988, and required by 401 KAR 8:440, may be used for purposes of initial monitoring compliance if approved by the cabinet. If the data are generally consistent with the other requirements of this section, the cabinet may use these data (i.e., a single sample rather than four (4) quarterly samples) to satisfy the initial monitoring requirement of subsection (4) of this section. Systems which use grandfathered samples and did not detect any contaminant listed in Section 3(1)(b) through (u) of this administrative regulation shall begin monitoring annually in accordance with subsection (5) of this section beginning with the initial compliance period.

(19) Increased monitoring where necessary to detect variations within the system may be required by the cabinet.

(20) Each approved laboratory shall determine the method detection limit (MDL), as defined in Appendix B to 40 CFR Part 136(1993), adopted without change, at which it is capable of detecting volatile organic chemicals. The acceptable MDL is 0.0005 mg/l. This concentration shall be the detection concentration for purposes of this section.

(21) Each public water system shall monitor when specified by the cabinet within each compliance period.

Section 2. Systems in operation before January 1, 1993, for purposes of initial monitoring, shall conduct analysis of the contaminants listed in Section 3(1)(a) through (h) of this administrative regulation for purposes of determining compliance with the maximum contaminant levels. The analyses shall be conducted as follows:

(1) Groundwater systems shall sample at points of entry to the distribution system that are representative of each well after any application of treatment. Sampling shall be conducted at the same location or a more representative location every three (3) months for one (1) year except as provided in subsection (7)(a) of this section.

(2) Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment. Surface water systems shall sample each source every three (3) months except as provided in subsection (7)(b) of this section. Sampling shall be conducted at the same location or a more representative location each quarter.

(3) If the system draws water from more than one (1) source and sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of normal operating conditions.

(4) (a) Beginning no later than January 1, 1988, all community water systems and nontransient, noncommunity water systems serving more than 10,000 people shall analyze all distribution or entry-point samples, as appropriate, representing all source waters.

(b) No later than January 1, 1989, all community water systems and nontransient noncommunity water systems serving from 3,300 to 10,000 people shall analyze all distribution or entry-point samples, as required in this section, representing all source waters.

(c) Beginning no later than January 1, 1991, all other community and nontransient, noncommunity water systems shall analyze distribution or entry-point samples, as required in this section, representing all source waters.

(5) The cabinet may require confirmation samples for positive or negative results. If a confirmation sample is required by the cabinet, the sample result shall be averaged with the first sample result and used for compliance determination in accordance with subsection (9) of this section. The cabinet may delete results of obvious sampling errors from this calculation.

(6) Analysis for vinyl chloride is required only for groundwater systems that have detected any of the following organic compounds: Trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each distribution or entry point at which the organic compound was found. If the first analysis does not detect vinyl chloride, the cabinet may reduce the frequency of vinyl chloride monitoring to once every three (3) years for that sample location or other sample locations which are more representative of the same source. Surface water systems may be required to analyze for vinyl chloride.

(7) Up to five (5) samples from one (1) or more public water systems may be composited with approval from the cabinet. Compositing of samples shall be performed in the laboratory by the procedures listed in this subsection. Samples shall be analyzed within fourteen (14) days of collection. If any organic contaminant listed in Section 3(1) of this administration regulation is detected in the original composite sample, a sample from each source that made up the composite sample shall be reanalyzed individually within fourteen (14) days from sampling. The sample for reanalysis shall not be the original sample but may be a duplicate sample. If duplicates of the original samples are not available, new samples shall be taken from each source used in the original composite and analyzed for volatile organic chemicals. Reanalysis shall be completed within fourteen (14) days of the date the second sample is taken. To composite samples, the following procedure shall be followed:

(a) Compositing samples prior to gas chromatograph analysis:

1. Add five (5) ml or equal larger amounts of each sample (up to five (5) samples are allowed) to a twenty-five (25) ml glass syringe. Special precautions shall be taken to maintain zero headspace in the syringe;

2. The samples shall be cooled at negative four (-4)° C during this step to minimize volatilization losses;

3. Mix well and draw out a five (5) ml aliquot for analysis;

4. Follow sample introduction, purging, and desorption steps described in the method found in 40 CFR 141.24(g)(10) (1993), hereby adopted without change; and

5. If less than five (5) samples are used for compositing, a proportionately smaller syringe may be used.

(b) Compositing samples prior to gas chromatograph/mass spectrometer analysis:

1. Inject five (5) ml or equal larger amounts of each aqueous sample (up to five (5) samples are allowed) into a twenty-five (25) ml purging device using the sample introduction technique described in the method found at 40 CFR 141.24(g)(10) (1993), adopted without change;

2. The total volume of the sample in the purging device shall be twenty-five (25) ml; and

3. Purge and desorb as described in the method in at 40 CFR 141.24(g)(10).

(8) The cabinet may reduce the monitoring frequency specified in subsection (1) and (2) of this section, as explained in subsection (7)(a) and (b) of this section.

(9) Compliance with Section 3(1) of this administrative regulation shall be determined based on the results of the running annual average of quarterly sampling for each sampling location. If the average for one (1) location is greater than the maximum contaminant level, the system shall be in noncompliance with this administrative regulation. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, only that part of the system that exceeds any maximum contaminant level as specified in Section 3 of this administrative regulation shall not be in compliance with this administrative regulation. The cabinet may reduce the public notice requirement so that it applies only to that portion of the system which is not in compliance. If any one (1) sample result would cause the annual average to be exceeded, the system shall be immediately in violation. For systems that only take one (1) sample per location because no VOCs were detected, compliance shall be based on that one (1) sample.

(10) Analysis under this section shall be conducted in accordance with the provisions of 40 CFR 141.24(g)(10) (1993) hereby adopted without change.

(11) Analysis under this section shall be conducted only by laboratories that have received conditional approval by EPA or the cabinet according to the following conditions:

(a) To receive conditional approval to conduct analyses for benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and paradichlorobenzene the laboratory shall:

1. Analyze Performance Evaluation samples which include these substances and are provided by EPA's Environmental Monitoring and Support Laboratory or equivalent samples provided by the cabinet;

2. Achieve the quantitative acceptance limits under subparagraphs 3 and 4 of this paragraph for at least six (6) of the seven (7) subject organic chemicals. The cabinet may allow fewer than six (6) of the seven (7) subject organic chemicals;

3. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus twenty (20) percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l;

4. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus forty (40) percent of the actual amount of the substances in the Performance Evaluation sample when the active amount is less than 0.010 mg/l;

5. Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B to 40 CFR Part 136 (1993) hereby adopted without change; and

6. Be currently approved by EPA or the cabinet for the analyses of trihalomethanes.

(b) To receive conditional approval for vinyl chloride, the laboratory shall:

1. Analyze Performance Evaluation samples provided by EPA's Environmental Monitoring and Support Laboratory or equivalent samples provided by the cabinet;

2. Achieve quantitative results on the analyses performed under subparagraph 1 of this paragraph that are within plus or minus forty (40) percent of the actual amount of vinyl chloride in the Performance Evaluation sample;

3. Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B to 40 CFR Part 136 (1993); and

4. Receive approval or be currently approved by EPA or the cabinet under paragraph (a) of this subsection.

(12) If monitoring data collected after January 1, 1983 are consistent with the other requirements in this section, the cabinet may use that data to represent the initial monitoring if the system is determined by the cabinet not to be vulnerable under the requirements of this section. In addition, the results of EPA's Groundwater Supply Survey may be used in a similar manner for systems supplied by a single well.

(13) The cabinet may increase required monitoring to detect variations within the system.

(14) The cabinet may determine compliance or initiate enforcement action based upon analytical results and other information compiled by cabinet personnel.

(15) Each approved laboratory shall determine the method detection limit (MDL), as defined in Appendix B to 40 CFR Part 136

(1993), at which it is capable of detecting volatile organic chemicals. The acceptable MDL is 0.0005 mg/l, which shall be the detection level for purposes of subsections (5) through (8) of this section.

~~[Section 1. Applicability. All community public water systems and all nontransient noncommunity public water systems shall comply with this regulation.~~

~~(1) Systems serving over 10,000 persons. Beginning no later than January 1, 1988, all water systems serving more than 10,000 persons shall begin analysis of their water systems in accordance with this regulation.~~

~~(2) Systems serving 3,300 persons to 10,000 persons, inclusive. Beginning no later than January 1, 1989, all systems serving 3,300 people to 10,000 people, inclusive, shall begin analysis of their water systems in accordance with this regulation.~~

~~(3) Other systems. No later than January 1, 1991, all other community and nontransient noncommunity water systems shall comply with this regulation.~~

~~(4) How population determined. For the purpose of this regulation, the number of persons served shall be determined in accordance with 401 KAR 8:200.~~

~~(5) Cabinet may sample. The cabinet may elect to perform the monitoring required by this regulation on behalf of a public water system, if all required schedules are met or advanced. The responsibility for compliance with this regulation remains with the public water system.~~

~~Section 2. Sampling Locations. Sampling locations for the purpose of complying with this regulation shall be as follows:~~

~~(1) Groundwater systems. Groundwater systems shall sample at points of entry to the distribution system representative of each well after any application of treatment. All samples shall be taken from the same or a more representative location for each entry point to the distribution system.~~

~~(2) Surface water systems. Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment. All samples shall be taken from the same or a more representative location for each source of water.~~

~~(3) If the system draws from more than one (1) source and the sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of normal operation.~~

~~(4) The cabinet may require check samples or confirmation samples for either positive or negative results. The cabinet may delete any obvious sampling errors. Confirmation samples shall be averaged with previous samples for the purpose of complying with this regulation.~~

~~Section 3. Monitoring Frequency. Monitoring frequency for community and nontransient noncommunity water systems shall be as follows:~~

~~(1) First year. Monitoring shall be quarterly for a period of one (1) year or until such time as the cabinet reduces the monitoring frequency in accordance with this regulation.~~

~~(2) Subsequent monitoring.~~

~~(a) For groundwater systems where VOCs are not detected in the first or any subsequent sample and the system is not vulnerable, as prescribed in Section 4 of this regulation, the cabinet may reduce monitoring to be repeated no less than once every five (5) years.~~

~~(b) For groundwater systems which are vulnerable, as prescribed in section 4 of this regulation, but where VOCs are not detected, the cabinet may reduce the monitoring frequency to no less than once every three (3) years for a system with more than 500 connections and once every five (5) years for a system with 500 or fewer connections.~~

~~(c) If VOCs are detected in a groundwater system, the cabinet will not reduce the monitoring frequency and monitoring shall continue on a quarterly basis.~~

~~(d) For surface water systems where VOCs are not detected in the first year of quarterly sampling or in subsequent samples, and the system is not vulnerable, as prescribed in section 4 of this regulation, the cabinet may reduce the monitoring frequency to no less than once every five (5) years.~~

~~(e) When VOCs are not detected in the first year of quarterly sampling or any subsequent sample, but the system is vulnerable, as prescribed in Section 4 of this regulation, a year of quarterly monitoring must be repeated every three (3) years for systems larger than 500 connections and every five (5) years for systems of 500 or fewer connections.~~

~~(f) When VOCs are detected in any sample, monitoring shall continue on a quarterly basis.~~

~~(g) The cabinet may, if it finds that VOCs detected in a public water system are consistently below the maximum contaminant level, as prescribed in this regulation, for three (3) consecutive years, reduce the quarterly testing to annual testing for a surface or groundwater system.~~

~~Section 4. Vulnerability. Criteria for establishing the vulnerability of public water systems to volatile organic chemicals (VOCs).~~

~~(1) All systems vulnerable until proven otherwise. For the purpose of this regulation, all public water systems shall be considered vulnerable until the system demonstrates to the cabinet's satisfaction that it is not vulnerable based on the criteria outlined in this regulation.~~

~~(2) Cabinet may require information to test. Any public water system that wishes the cabinet to consider declaring the system nonvulnerable to VOC contamination shall submit a request to the cabinet. The request shall contain a detailed sanitary survey, as well as an explanation of why the system believes it is not vulnerable. Such explanation shall include the number of persons served by the system, the proximity of the public water system to other public water systems, the proximity of the system to commercial or industrial use, the method of disposal or storage of volatile synthetic organic chemicals, the methods utilized in the protection of the water source, and any other information the cabinet may require. Any previous testing which has resulted in a positive measurement of any contaminant listed in this regulation, except for disinfection by products, shall cause a public water system to be considered vulnerable, regardless of other factors, for a period of three (3) years.]~~

Section 3. ~~[5.]~~ Maximum Contaminant Levels for Certain Volatile Organic Chemicals, Treatment Techniques. (1) Community and nontransient noncommunity water systems. The following maximum contaminant levels of organic contaminants shall apply to community water systems and nontransient noncommunity water systems:

CAS No.	Chemical	MCL(mg/l)
(a) 75-01-4	Vinyl chloride	0.002
(b) 71-43-2	Benzene	0.005
(c) 56-23-5	Carbon tetrachloride	0.005
(d) 107-06-2	1,2-Dichloroethane	0.005
(e) 79-01-6	Trichloroethylene	0.005
(f) 106-46-7	para-Dichlorobenzene	0.075
(g) 75-35-4	1,1-Dichloroethylene	0.007
(h) 71-55-6	1,1,1-Trichloroethane	0.2
(i) 156-59-2	cis-1,2-Dichloroethylene	0.07
(j) 78-87-5	1,2-Dichloropropane	0.005
(k) 100-41-4	Ethylbenzene	0.7
(l) 108-90-7	Monochlorobenzene	0.1
(m) 95-50-1	o-Dichlorobenzene	0.6
(n) 100-42-5	Styrene	0.1
(o) 127-18-4	Tetrachloroethylene	0.005
(p) 108-88-3	Toluene	1

(q) 156-60-5	trans-1,2-Dichloroethylene	0.1
(r) 1330-20-7	Xylenes (total)	10
(s) 75-09-2	Dichloromethane	0.005
(t) 120-82-1	1,2,4-Trichlorobenzene	0.07
(u) 79-00-5	1,1,2-Trichloroethane	0.005

(2) The following, granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) as indicated in the table below, are the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant level for synthetic organic contaminants identified in this administrative regulation and 401 KAR 8:400:

CAS No.	Chemical	Method for Determining Compliance[1]
15972-60-8	Alachlor	GAC
116-06-3	Aldicarb	GAC
1646-87-3	Aldicarb sulfone	GAC
1646-87-3	Aldicarb sulfoxide	GAC
1912-24-9	Atrazine	GAC or PTA
71-43-2	Benzene	GAC
1563-66-2	Carbofuran	GAC or PTA
56-23-5	Carbon tetrachloride	GAC or PTA
57-74-9	Chlordane	GAC
94-75-7	2,4-D	GAC
96-12-8	Dibromochloropropane (DBCP)	GAC or PTA
95-50-1	o-Dichlorobenzene	GAC or PTA
107-06-2	1,2-Dichloroethane	GAC or PTA
156-59-2	cis-1,2-Dichloroethylene	GAC or PTA
156-60-5	trans-1,2-Dichloroethylene	GAC or PTA
75-35-4	1,1-Dichloroethylene	GAC or PTA
78-87-5	1,2-Dichloropropane	GAC or PTA
106-93-4	Ethylene Dibromide (EDB)	GAC or PTA
100-41-4	Ethylbenzene	GAC or PTA
76-44-8	Heptachlor	GAC
1024-57-3	Heptachlor epoxide	GAC
58-89-9	Lindane	GAC
72-43-5	Methoxychlor	GAC
108-90-7	Monochlorobenzene	GAC or PTA
106-46-7	para-Dichlorobenzene	GAC or PTA
1336-36-3	Polychlorinated biphenyls (PCB)	GAC
87-86-5	Pentachlorophenol	GAC
100-42-5	Styrene	GAC or PTA
93-72-1	2,4,5-TP (Silvex)	GAC or PTA
127-18-4	Tetrachloroethylene	GAC or PTA
71-55-6	1,1,1-Trichloroethane	GAC or PTA
79-01-6	Trichloroethylene	GAC or PTA
108-88-3	Toluene	GAC
8001-35-2	Toxaphene	GAC or PTA
75-01-4	Vinyl chloride	PTA
1330-20-7	Xylene	GAC or PTA
50-32-8	Benzo(a)pyrene	GAC
75-99-0	Dalapon	GAC
75-09-2	Dichloromethane	PTA
103-23-1	Di(2-ethylhexyl)adipate	GAC or PTA
117-81-7	Di(2-ethylhexyl)phthalate	GAC
88-85-7	Dinoseb	GAC
85-00-7	Diquat	GAC
145-73-3	Endothall	GAC
72-20-8	Endrin	GAC
1071-53-6	Glyphosate	OX
118-74-1	Hexachlorobenzene	GAC
77-47-3	Hexachlorocyclopentadiene	GAC or PTA
23135-22-0	Oxamyl (Vydate)	GAC
1918-02-1	Picloram	GAC
122-34-9	Simazine	GAC
120-82-1	1,2,4-Trichlorobenzene	GAC or PTA
79-00-5	1,1,2-Trichloroethane	GAC or PTA
1746-01-6	2,3,7,8-TCDD (Dioxin)	GAC

[1]GAC Granular activated carbon; PTA - Packed Tower aeration; and OX - Oxidation.

~~[Maximum contaminant level in mg/l~~

~~Contaminant~~	
~~Benzene~~	~~0.005~~
~~Vinyl Chloride~~	~~0.002~~
~~Carbon tetrachloride~~	~~0.005~~
~~1,2 Dichloroethane~~	~~0.005~~
~~Trichloroethylene~~	~~0.005~~
~~1,1 Dichloroethylene~~	~~0.007~~
~~1,1,1 Trichloroethane~~	~~0.200~~
~~para Dichlorobenzene~~	~~0.075~~

~~(2) Best available treatment. The following are the best technology treatment techniques for achieving compliance with the maximum contaminant levels for the synthetic organic chemicals identified in subsection (1) of this section:~~

~~(a) Central treatment using packed tower aeration for all of the above; or~~

~~(b) Central treatment using granular activated carbon for all these chemicals except vinyl chloride.~~

~~(3) Point of entry devices. Public water systems may use point of entry devices to comply with maximum contaminant levels only if they meet the requirements of this subsection:~~

~~(a) It is the responsibility of the public water system to operate and maintain the point of entry treatment system.~~

~~(b) The public water system shall develop and obtain cabinet approval for a monitoring plan before point of entry devices are installed for compliance. Under the plan approved by the cabinet, point of entry devices shall provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all primary and secondary drinking water standards and would be of acceptable quality similar to that of water distributed by a well operated central treatment plant. In addition to the VOCs, monitoring shall include physical measurements and observations such as total flow treated and the mechanical condition of the treatment equipment.~~

~~(c) Effective technology shall be properly applied under a plan approved by the cabinet and the microbiological safety of the water shall be maintained.~~

~~1. The cabinet shall require adequate certification of performance and field testing, including a rigorous engineering design review of the point of entry devices.~~

~~2. The design and application of the point of entry devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, postcontactor disinfection, and heterotrophic plate count monitoring to ensure that the microbiological safety of the water is not compromised.~~

~~(d) All consumers shall be protected. Every building connected to the system shall have a point of entry device installed, maintained, and adequately monitored. The public water system shall assure the cabinet that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.~~

~~(e) Public water systems shall not use bottled water or point of use devices to achieve compliance with an MCL. Bottled water or point of use devices may be used on a temporary basis with cabinet approval, to avoid an unreasonable risk to health.~~

~~Section 6. Sampling and Testing Procedures for Volatile Organic Chemicals. (1) Compliance methodology. Compliance with this regulation shall be based upon the results of the running annual average of quarterly sampling for each sampling location. Results of sample analysis shall be submitted to the cabinet within ten (10) days of the end of the compliance period for which the sample was taken. If one location's average is greater than the MCL, the system shall be deemed to be out of compliance. If a public water system has a distribution system separable from other parts of the distribution system, with no interconnections, only that part of the system that exceeds any MCL, as specified in Section 5 of this regulation, shall be deemed out of compliance. The cabinet may reduce the public notice requirement as to that portion of the system which is out of compliance. If any one (1) sample result would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. For systems that only take one (1) sample per location because no VOCs were detected, compliance shall be based on that one (1) sample.~~

~~(2) Analytical methods. Analysis under this regulation shall be conducted in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet, in accordance with 40 CFR 141.24 (g)(10), 1987, or by the cabinet, and shall be conducted by a laboratory with approval for such analysis in accordance with 40 CFR 141.24(g) (11), 1987.~~

~~(3) Composite samples. The cabinet or individual public water system may choose to composite up to five (5) samples from one (1) or more public water systems. Compositing of samples shall be performed in the laboratory by the procedures listed below. Samples shall be analyzed within fourteen (14) days of collection. If any VOC is detected in the original composite sample, a sample from each source that made up the composite sample shall be reanalyzed individually within fourteen (14) days from sampling. The sample for reanalysis shall not be the original sample, but can be a duplicate sample. If duplicates of the original samples are not available, new samples shall be taken from each source used in the original composite and analyzed for VOCs. Reanalysis shall be accomplished within fourteen (14) days of the second sample. The following procedure shall be followed as to composite samples:~~

~~(a) Compositing samples prior to gas chromatograph (GC) analysis.~~

~~1. Add five (5) ml, or equal larger amounts, of each sample (up to five (5) samples are allowed) to a twenty five (25) ml glass syringe. Zero head space in the syringe shall be maintained.~~

~~2. The samples shall be cooled at four (4) degrees Centigrade during this step to minimize volatilization losses.~~

~~3. Mix well and draw out a five (5) ml aliquot for analysis.~~

~~4. Follow sample introduction, purging, and desorption steps described in the method.~~

~~5. If less than five (5) samples are used for compositing, a proportionately smaller syringe may be used.~~

~~(b) Compositing samples prior to gas chromatograph/mass spectrometer (GC/MS) analysis.~~

~~1. Inject five (5) ml or equal larger amounts of each aqueous sample (up to five (5) samples are allowed) into a twenty five (25) ml purging device, using the sample introduction technique described in the method.~~

~~2. The total volume of the sample in the purging device shall be twenty five (25) ml.~~

~~3. Purge and desorb as described in the method.~~

~~(4) Vinyl chloride in groundwater systems. Analysis for vinyl chloride is required only for groundwater systems that have detected one (1) or more of the following two (2) carbon organic compounds: trichloroethylene; tetrachloroethylene; 1,2 dichloroethane; 1,1,1 trichloroethane; cis 1,2 dichloroethylene; trans1,2 dichloroethylene; or 1,1 dichloroethylene. The analysis for vinyl chloride is required at each distribution or entry point at which one (1) or more of the two (2) carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the cabinet may reduce the frequency of vinyl chloride monitoring to once every three (3) years for that sample location or other sample locations which are more representative of the same source. Surface water systems may be required to analyze for vinyl chloride at the discretion of the cabinet.~~

~~(5) Analysis by certified laboratory required. Analysis under this section shall only be conducted by laboratories certified in accordance with 401 KAR 8:040 and certified in accordance with 40 CFR 141.24(g)(11) as to volatile organic chemicals. In addition, laboratories certified for volatile organic chemicals shall comply with 40 CFR 141.24(g)(15).]~~

Section 4. ~~[7.]~~ Miscellaneous Provisions. (1) Increased monitoring. The cabinet may increase required monitoring if ~~[where]~~ necessary to detect variations within the system.

(2) Compliance and enforcement. The cabinet may determine compliance or initiate enforcement action based upon analytical results and other information.

~~[(3) Systems with less than 150 service connections. Public water systems supplying fewer than 150 service connections may comply with the requirements of this regulation if the owner or operator notifies the cabinet prior to January 1, 1991, that the system is available for sampling.]~~

(3) ~~[(4)]~~ Purchasers. Public water systems which purchase water from a public water system~~[s]~~ which is ~~[are]~~ monitoring for VOCs under this administrative regulation are exempt from the requirements of this administratie regulation if they do not alter the water in any way. Public water systems which purchase water and do alter or treat the water in any way may be required by the cabinet to comply with the requirements of this administrative regulation.

(4) ~~[(5)]~~ Other monitoring. If the cabinet has reason to believe that any public water system may be contaminated with VOCs, it may require the system to monitor for VOCs at any time.

Section 5. ~~[8.]~~ Variances. Variances from the maximum contaminant levels for synthetic organic chemicals may be granted pursuant to 401 KAR 8:060.

~~[(1) Best available treatment installed. Community and nontransient noncommunity (NTNC) public water systems shall install or use either packed tower aeration or granular activated carbon (except for vinyl chloride) treatment technology before the cabinet may consider a variance, unless the system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that such treatment technologies would achieve only a de minimis reduction in contaminants. The cabinet may then issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance. If, after the system installs packed tower aeration or granular activated carbon (except for vinyl chloride) technology, the system still does not meet the MCL, that system shall be eligible for a variance from this regulation. If a system has demonstrated that packed tower aeration or granular activated carbon would achieve only a de minimis reduction and has, through examination of other treatment methods, discovered another treatment method which may be technically feasible, the system may request that the cabinet certify that the method is feasible. If the cabinet certifies, based on studies by the system and other relevant information, that the treatment is technically feasible, the cabinet may require such treatment be installed by the system.~~

~~(2) Bottled water or point of use device. The cabinet may require public water systems to use bottled water or point of use devices or other means as a condition of granting a variance from the requirements of this regulation, provided the following requirements are met:~~

~~(a) Public water systems that use bottled water as a condition for receiving a variance shall develop and put into place a monitoring program approved by the cabinet that provides reasonable assurances that the bottled water meets all MCLs. The system shall monitor~~

~~a representative sample of the bottled water, for all contaminants in this regulation, in the first quarter that it supplies bottled water to the public and annually thereafter. Results of the monitoring shall be provided annually to the cabinet.~~

~~(b) In lieu of monitoring, the water system may provide the cabinet with certification from the bottled water company that the bottled water supplied is in compliance with all applicable state and federal regulations. The certification shall be satisfactory to the cabinet.~~

~~(c) The public water system is responsible for the provision of sufficient quantities of bottled water to every person supplied by the system, via door to door bottled water delivery.~~

~~(d) Any public water systems that use point of use devices as a condition for obtaining a variance from this regulation shall meet the following requirements:~~

~~1. The public water system shall operate and maintain the point of use treatment system;~~

~~2. The public water system shall develop a monitoring plan and obtain cabinet approval for the plan before point of use devices are installed for compliance. This monitoring plan shall provide health protection equivalent to a monitoring plan for central water treatment;~~

~~3. The public water system shall properly apply effective technology, under a plan approved by the cabinet, and shall maintain the microbiological safety of the water;~~

~~4. The public water system shall obtain an adequate certification of performance from the cabinet, perform field testing, and, if not included in the certification process, perform a rigorous engineering design review of the point of use devices;~~

~~5. The design and application of the point of use devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, postcontactor disinfection, and heterotrophic plate count monitoring to ensure that the microbiological safety of the water is not compromised; and~~

~~6. The public water system shall protect all consumers. Every building connected to the system shall have a point of use device installed, maintained, and adequately monitored. The system shall be assure the cabinet that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of the property.~~

~~(e) The cabinet may require a public water system to use bottled water or point of use devices as a condition for granting an exemption or variance from this regulation.~~]

Section 6. [~~9.~~] Compliance Schedules. (1) Temporary. Any public water system found to be in violation of any maximum contaminant level set by this administrative regulation shall immediately submit to the cabinet a plan to mitigate the [~~such~~] violation on a short-term basis until best available technology can be put in place. The [~~Such~~] short-term measures shall be employed immediately upon approval of the cabinet. These measures may include the feeding of powdered activated carbon, changing the source of water, providing bottled water, or other processes approved by the cabinet.

(2) Best available technology. Any public water system showing a violation of the maximum contaminant levels established by this administrative regulation shall come into compliance with this administrative regulation, establishing best available technology to reduce the contamination to acceptable limits. [~~Such~~] Compliance shall be achieved on the following schedule:

(a) For public water systems serving greater than 10,000 persons, within twelve (12) months of the notice of violation.

(b) For public water systems serving less than or equal to 10,000 persons, but greater than or equal to 3,300 persons, within eighteen (18) months of notice of violation.

(c) For public water systems serving less than 3,300 persons, within twenty-four (24) months of the notice of violation.

(d) The cabinet may approve, in writing, a compliance schedule other than that provided in this section; however, short term mitigation procedures shall be maintained to the cabinet's satisfaction, from the time of initial approval of the public water system's plan to employ short term remediation to the time of installation and satisfactory testing of best available technology.

(3) Public notification. Nothing herein shall relieve the public water system from the requirements for public notification contained in 401 KAR 8:070.

[~~Section 10. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This administrative regulation applies to about 534 community and 166 nontransient noncommunity public water systems. This number can vary from month to month.

(a) Direct and indirect costs or savings to those affected: This administrative regulation requires monitoring for 21 volatile organic chemicals, thirteen of which are new as a result of federal regulations published by the Environmental Protection Agency on January 30, 1991 and July 17, 1992, usually referred to as Phase II and Phase V chemical regulations. Monitoring for the first round of Phase II and Phase V monitoring will be conducted by the cabinet for most public water systems serving less than 10,000 persons. Monitoring for systems serving over 10,000 persons, as well as industrial commercial, and federal facilities, will be the responsibility of the public water system.

1. First year: The Cabinet will monitor the first round of the

chemicals in this administrative regulation for systems serving less than 10,000 persons. However, check samples or increased monitoring as a result of a detection or violation of an MCL will be the responsibility of the public water system. Systems serving more than 10,000 persons and all industrial, commercial and federal facilities will be responsible for monitoring.

2. Continuing costs or savings: Monitoring after the first round will be the responsibility of the public water system regardless of size. The amount of monitoring required will depend on detections or violations found in the first round.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If a maximum contaminant level is violated, the public water system will be required to install best available technology. The cost of this technology will vary with the technology used and the extent of contamination, and can range from about $13,000 for granular activated carbon to $60,000 for packed tower aeration.

(b) Reporting and paperwork requirements: Public water systems are required to submit data generated by monitoring to the Cabinet. If an MCL is violated additional reports are likely.

(2) Effects on the promulgating administrative body: This administrative regulation will require the Cabinet to manage data generated under this administrative regulation. In addition any enforcement and follow-up required will have to be managed. The Cabinet is also conducting the first round of monitoring of new contaminants required by this administrative regulation.

(a) Direct and indirect costs or savings: Data management and enforcement actions required as a result of this administrative regulation will be absorbed by current staff.

1. First year: Monitoring will require substantial amounts of laboratory time as well as time required from field staff to collect samples. While these tasks will be accomplished by current staff, it will require a reduction in the availability of laboratory services and field staff services to other programs.

2. Continuing costs or savings: First round monitoring will require three years to complete.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The Cabinet will report data generated by this administrative regulation to the Environmental Protection Agency. This will be managed through currently used computer reporting systems.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no affect on state revenue. Public water systems owned by local governments will eventually have to pick up the costs of this administrative regulation, however, most cost increases are expected to be passed through to consumers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation tracks Federal requirements. Any alternative to this administrative regulation would be inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts, overlaps, or duplicates, with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation is tiered to consider the type of water system regulated and the type of chemical which may be found.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the provision of potable drinking water.

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

Revenues (+/-): None available.

Expenditures (+/-): None available.

Other Explanation: This administrative regulation requires public water systems to monitor for certain volatile organic chemicals. If a maximum contaminant level is exceeded the system shall install the best available technology to remove the contaminant. The costs of this administrative regulation will likely be passed through to the consumer of water. However, a local government which owns a public water system could elect to absorb these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.24 and 40 CFR 141.61 as amended at 56 Federal Register 3583 January 30, 1991, 56 Federal Register 30277 July 1, 1991, and 57 Federal Register 31841 July 17, 1992.

2. State compliance standards. This administrative regulation sets forth monitoring and testing requirements, maximum contaminant levels, and best available technology for certain volatile organic chemicals.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate sets forth monitoring and testing requirements, maximum contaminant levels and best available technology for certain volatile organic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:440. Special testing for unregulated inorganic and synthetic organic chemicals.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141 (1993), ~~[PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988,]~~ 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce the administrative ~~[rules and]~~ regulations adopted by the secretary for the regulation and control of the purification of

water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations"; as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [~~such~~] primary enforcement responsibility. This administrative regulation lists certain volatile synthetic organic chemicals which, while unregulated, nevertheless shall [~~must~~] be monitored by community and nontransient noncommunity public water systems.

Section 1. Applicability. All community and nontransient noncommunity water systems shall comply with this administrative regulation.

(1) Public water systems shall complete the monitoring required by this administrative regulation by December 31, 1995. [~~Systems serving over 10,000 persons. Systems serving over 10,000 people shall complete the initial monitoring required by this regulation by the effective date of this regulation. Systems serving 3,300 to 10,000 people shall complete the initial monitoring required by this regulation by the effective date of this regulation. Systems serving less than 3,300 people shall complete the initial monitoring required by this regulation by January 1, 1991.~~]

(2) Cabinet may monitor. The cabinet may elect to conduct this monitoring on behalf of a water system or all water systems, if all deadlines are met. However, [~~Responsibility for testing remains with~~] the public water system shall be responsible for monitoring.

Section 2. Sampling Sites. (1) Surface water source. Surface water systems shall sample at points in the distribution system representative of each water source or at entry points to the distribution system after any application of treatment. The minimum number of samples is one (1) year of quarterly samples per water source.

(2) Groundwater source. Groundwater systems shall sample at points of entry to the distribution system representative of each well after any application of treatment. The minimum number of samples is one (1) sample per entry point to the distribution system.

(3) Confirmation samples. The cabinet may require confirmation samples for positive or negative results.

Section 3. Applicability. (1) All community and nontransient noncommunity water systems shall monitor for the following contaminants:

(a) Chloroform
(b) Bromodichloromethane
(c) Chlorodibromomethane
(d) Bromoform
(e) Chlorobenzene [~~trans-1,2-Dichlorethylene~~]
(f) m-Dichlorobenzene [~~Chlorobenzene~~]
(g) 1,1-Dichloropropene [~~m-Dichlorobenzene~~]
(h) 1,1-Dichloroethane [~~Dichloromethane~~]
(i) 1,1,2,2-Tetrachloroethane [~~cis, 1,2-Dichloroethylene~~]
(j) 1,3-Dichloropropane [~~o-Dichlorobenzene~~]
(k) Dibromomethane
(l) Chloromethane [~~1,1-Dichloropropene~~]
(m) Bromomethane [~~Tetrachloroethylene~~]
(n) 1,2,3-Trichloropropane [~~Toluene~~]
(o) 1,1,1,2-Tetrachloroethane [~~p-Xylene~~]
(p) Chloroethane [~~o-Xylene~~]
(q) 2,2-Dichloropropane [~~m-Xylene~~]
(r) o-Chlorotoluene [~~1,1-Dichloroethane~~]
(s) p-Chlorotoluene [~~1,2-Dichloropropane~~]
(t) Bromobenzene [~~1,1,2,2-Tetrachloroethane~~]
(u) 1,3-Dichloropropene [~~Ethylbenzene~~]
[~~(v) 1,3-Dichloropropane~~
~~(w) Styrene~~
~~(x) Chloromethane~~
~~(y) Bromomethane~~
~~(z) 1,2,3-Trichloropropane~~
~~(aa) 1,1,1,2-Tetrachloroethane~~
~~(bb) Chloroethane~~
~~(cc) 1,1,2-Trichloroethane~~
~~(dd) 2,2-Dichloropropane~~
~~(ee) o-Chlorotoluene~~
~~(ff) p-Chlorotoluene~~
~~(gg) Bromobenzene~~
~~(hh) 1,3-Dichloropropene~~]
(v) [~~(ii)~~] Ethylene dibromide (EDB)
(w) [~~(jj)~~] 1,2-Dibromo-3-Chloropropane (DBCP)

(2) Sampling for EDB and DBCP may be waived by the cabinet if the system demonstrates to the satisfaction of the cabinet that it is not vulnerable to these two chemicals.

(3) Monitoring for the following compounds may be required by the cabinet.

(a) 1,2,4-Trimethylbenzene
(b) 1,2,4-Trichlorobenzene
(c) 1,2,3-Trichlorobenzene
(d) n-Propylbenzene
(e) n-Butylbenzene
(f) Naphthalene
(g) Hexachlorobutadiene
(h) 1,3,5-Trimethylbenzene
(i) p-Isopropyltoluene
(j) Isopropylbenzene
(k) Tert-Butylbenzene
(l) Sec-Butylbenzene
(m) Fluorotrichloromethane
(n) Dichlorodifluoromethane
(o) Bromochloromethane

(4) Instead of performing the monitoring required by this section, a community water system or nontransient, noncommunity water system serving fewer than 150 service connections may send a letter stating that its system is available for sampling.

(5) The sampling required under this administrative regulation shall be repeated no less than every five years (5) from the initial sample. After January 1, 1993, sampling for the contaminants listed in this section shall be incorporated into the three (3) year compliance period used by the public water system for those contaminants regulated in 401 KAR 8:420.

Section 4. Analytical Methods. (1) Approved methods. Analyses for compliance with this administrative regulation shall be in accordance with 40 CFR 141.40(g) (1993) hereby adopted without change.

(2) Laboratory certification required. Analysis under this administrative regulation [~~section~~] shall only be conducted by laboratories certified by EPA or the cabinet in accordance with 401 KAR 8:040 and 40 CFR 141.24(g)(11) (1993) hereby adopted without change. [~~In addition to the other requirements, each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures approved by the cabinet.~~]

(3) Compositing of samples for chemicals listed in Section 3 of [~~under~~] this administrative regulation may be performed for up to five (5) samples. [~~In accordance with regulated organic chemicals as set forth in 401 KAR 8:420, Section 6(2)(a).~~]

Section 5. Monitoring of the contaminants listed in subsections (11) and (12) of this section shall be conducted as follows:

(1) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples at each sampling point for each contaminant listed in subsection (11) of this section and shall submit the results to the cabinet. Monitoring shall be completed by December 31, 1995.

(2) Each community and nontransient noncommunity water

system shall take one (1) sample at each sampling point for each contaminant listed in subsection (12) of this section and shall submit the results to the cabinet. Monitoring shall be completed by December 31, 1995.

(3) Each community and nontransient noncommunity water system may apply to the cabinet for a waiver from the requirements of subsections (1) and (2) of this section.

(4) The cabinet may grant a waiver from the requirements of subsection (1) of this section based on the criteria specified in 401 KAR 8:400, Section 3(6). The cabinet may grant a waiver from the requirements of subsection (2) of this section if previous analytical results indicate contamination would not occur, if the data were collected after January 1, 1990.

(5) Groundwater systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment, hereafter called a sampling point. Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(6) Surface water systems shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample shall be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this subsection, surface water systems include systems with a combination of surface and ground sources.

(7) If the system draws water from more than one (1) source and the sources are combined before distribution the system shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e. when water representative of all sources is being used).

(8) Confirmation samples for positive or negative results may be required.

(9) The total number of samples a system shall analyze may be reduced, with the approval of the cabinet, by the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed. Compositing of samples shall be performed in the laboratory and the composite sample shall be analyzed within fourteen (14) days of collection. If the population served by the system is greater than 3,300 persons, compositing may only be permitted at sampling points within a single system. In systems serving less than or equal to 3,300 persons, the cabinet may permit compositing among different systems if the five (5) sample limit is maintained.

(10) Instead of performing the monitoring required by this section, a community water system or nontransient noncommunity water system serving fewer than 150 service connections may submit a letter to the cabinet stating that the system is available for sampling.

(11) Unregulated organic contaminants:

Aldrin
Butachlor
Carbaryl
Dicamba
Dieldrin
3-Hydroxycarbofuran
Methomyl
Metolachlor
Metribuzin
Propachlor

(12) Unregulated inorganic contaminants:

Sulfate

(13) Analysis for the contaminants listed in this section shall be conducted in accordance with 40 CFR 141.40(n)(11),(12) (1993) hereby adopted without change.

Section 6. [~~5.~~] Results. (1) Time limits. A copy of the results of monitoring under this administrative regulation shall be forwarded to the cabinet by the owner or operator of the community or nontransient noncommunity water system within thirty (30) days of receipt.

(2) Notification. The community or nontransient noncommunity water system shall notify the persons served by it that the monitoring required by this administrative regulation has been completed and that the results are available for examination. The [~~Such~~] notice shall be within three (3) months of receipt of the results and may be served in either of the following methods:

(a) The system shall place the notice in a daily or weekly newspaper of general circulation in the area. If this option is chosen, the page of the newspaper containing the advertisement shall be forwarded to the cabinet within fourteen (14) days of publication.

(b) The system shall mail the notice either directly or in water bills to each customer. If this option is chosen the system shall forward a copy of the notice to the cabinet within fourteen (14) days of the mailing, with an affidavit signed by the owner or operator of the water system stating how and when the notice was delivered.

(3) Content of notices. Notices required by this administrative regulation shall contain the name and address of the water system, an explanation of the monitoring which took place, a place where the results of the monitoring may be reviewed, hours when the results may be reviewed, and the name and telephone number of a person whom the customer may contact for information regarding the results.

[~~Section 5. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 15, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation applies

to 534 community and 166 nontransient noncommunity water systems. This number may vary from month to month.

(a) Direct and indirect costs or savings to those affected: This regulation requires public water systems to conduct monitoring for certain unregulated (i.e. no maximum contaminant level) chemicals. This monitoring consists of 4 quarterly samples. Monitoring for this regulation and the other Phase II and Phase V chemicals will cost approximately $12,000 per system according to EPA estimates.

1. First year: For most public water systems serving under 10,000 persons, the cabinet will conduct this monitoring at no cost to the system. An exception to this will be industrial, commercial, and federal facilities. Systems serving over 10,000 persons, industrial, commercial and federal facilities must pick up this cost.

2. Continuing costs or savings: The cabinet will absorb monitoring costs for systems serving less than 10,000 persons for one year. Any later tests will be paid for by the system. Industrial, commercial, and federal facilities as well as systems serving over 10,000 persons will pay for all costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Public notification costs to explain the results of this monitoring will be the responsibility of the public water system. Public notification may be by newspaper or mail. Depending on the newspaper this could range from a few dollars to $100.00. Direct mail costs depend on the size of the system.

(b) Reporting and paperwork requirements: Public water systems shall notify the public when this monitoring is complete and explain when and where the results may be viewed.

(2) Effects on the promulgating administrative body: The Cabinet will conduct the monitoring required by this regulation for public water systems serving less than 10,000 persons.

(a) Direct and indirect costs or savings: Field personnel and laboratory personnel will be dedicated to this effort. Some oversight will be necessary to ensure public notifications take place as required.

1. First year: Field resources and laboratory resources absorbed by this effort will reduce the amount of time that these personnel may dedicate to other programs.

2. Continuing costs or savings: This monitoring will take place over a three year period.

3. Additional factors increasing or decreasing costs: No other factors will effect costs.

(b) Reporting and paperwork requirements: Cabinet personnel will be required to assure public notification of the availability of data takes place.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation tracks federal requirements. Alternative methods would be inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or government policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to take into consideration different types of public water systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation requires public water systems to monitor for certain organic and inorganic chemicals. Public water systems will generally pass the costs for this monitoring through to its customers. However, a local government which owns a public water system could elect to absorb these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.40 as amended at 56 Federal Register 3592 January 30, 1991, and 57 Federal Register 31845 July 17, 1992.

2. State compliance standards. This regulation provides for monitoring and testing requirements for certain organic and inorganic chemicals.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides for monitoring and testing requirements for certain organic and inorganic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standard is the same.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:500. Disinfection by-products.

RELATES TO: KRS Chapter 224, 40 CFR Part 141, 40 CFR 142.60

STATUTORY AUTHORITY: KRS 224.10-10, 224.10-110, [~~PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988,~~] 42 USCA 300f, 300g, 300j, 40 CFR 141.29, [~~Section~~] 141.30[~~(e)~~]

NECESSITY AND FUNCTION: KRS 224.10-110 directs the cabinet to enforce administrative [~~rules and~~] regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising [~~such~~] primary enforcement responsibility. This administrative regulation sets forth the requirements for by-products of disinfectants used to purify drinking water. Such by-products may, when consumed over a long period of time, cause adverse health affects. This administrative regulation stipulates who shall [~~must~~] test for the [~~such~~] by-products and what actions are to be taken when they are found.

Section 1. Applicability. Each community public water system serving 10,000 or more persons that adds a disinfectant as part of its treatment process shall monitor for trihalomethanes. The cabinet may provide technical assistance in sampling and sample analysis for trihalomethanes. Consecutive community water systems, where there is a seller and one (1) or more purchasers of water and the combined population of the systems involved exceeds 10,000 or more persons, shall be required to sample for trihalomethanes, pursuant to this administratie regulation, as follows:

(1) Seller responsible. If [~~When~~] a buyer does not practice booster disinfection or alter the water [~~in any way~~], the seller shall be responsible for monitoring. Sampling shall be performed pursuant to this administrative regulation at a point in the buyer's distribution system which reflects the longest period of retention.

(2) Buyer responsible. If a buyer practices booster disinfection or alters the water [~~in any way~~], monitoring shall be the responsibility of the buyer and sampling shall be performed pursuant to this administrative regulation. The raw water sample shall be taken at the point of entry into the system of the buyer and ahead of the booster chlorination point.

(3) Public notification. A public water [~~Any~~] system determined by the cabinet to be the major contributor to violations of maximum contaminant levels for total trihalomethanes shall notify the public in accordance with 401 KAR 8:070.

(4) If the maximum contaminant level for total trihalomethanes, as set forth in Section 4 of this administrative regulation, is exceeded by any system in consecutive public water systems, each public water system contributing to the total trihalomethanes shall be deemed to be in violation of Section 4 of this administrative regulation and shall be responsible for costs of bringing the total trihalomethanes to within regulatory requirements throughout the consecutive public water systems. Each public water system may propose to the cabinet separately or jointly with other consecutive public water systems, how best to apply best available technology to comply with this administrative regulation. The cabinet shall negotiate with each affected public water system to establish a time frame for compliance with this subsection.

Section 2. Sampling Frequency. Public water systems serving more than 10,000 persons shall monitor quarterly for trihalomethanes.

Section 3. Sampling Locations. Samples shall be taken on the following basis:

(1) Raw water. One (1) untreated or raw water sample to determine interference factors.

(2) Normal usage points. Three (3) samples shall be taken from a free-flowing tap at points in the distribution system which reflect normal average daily usage or turnover.

(3) Maximum residence point. One (1) sample shall be taken from a free-flowing tap in the system which reflects the longest time period of retention within the distribution system, but shall not be taken on a dead-end.

(4) Time frame. Each [~~All~~] quarterly sample[~~s~~] shall be taken in the same week and at the same designated sample points during each quarter.

(5) Total samples. The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.

(6) Multiple plant operations. In multiple plant operations, sampling shall reflect the distribution from each plant.

Section 4. Maximum Trihalomethane Limits. The maximum contaminant level for total trihalomethanes (TTHMs) is [~~one tenth~~ {]0.10[}] milligrams per liter (mg/l).

(1) How computed. The results of all analyses performed each quarter shall be averaged and reported in a format supplied or approved by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated by the cabinet.

(2) Running average. Compliance shall [~~will~~] be determined by [~~on~~] a running annual average of the four (4) most recent quarterly samples.

Section 5. Reduction in Sampling Frequency. Upon receipt of a written request[~~, and at the discretion of the cabinet,~~] the requirement of a sampling frequency of four (4) samples-per -quarter per year for each treatment plant used by the system may be reduced by the cabinet to a minimum of one (1) sample for TTHMs per quarter. A [~~Such~~] reduction in frequency shall only be considered if, after one (1) full year of monitoring in accordance with the original schedule, it has been demonstrated that the water delivered to consumers is below the TTHM MCL of [~~one tenth~~ {]0.10[}] mg/l. The minimum single sample for TTHM shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHM, and is confirmed by at least one (1) check sample, the system shall comply with the four (4) samples-per-quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring four (4) samples per quarter.

Section 6. Increase in Sampling Frequency. If analytical results from quarterly sampling show a TTHM arithmetic sum above acceptable limits, the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

Section 7. Sampling and Analytical Methods. (1) Approved methods. Sampling and analyses conducted pursuant to this administrative regulation [~~section~~] shall be conducted in accordance with 40 CFR 141.30(e) (1993) hereby adopted without change.

(2) Certified laboratories. The cabinet will only accept analytical data from laboratories which have participated in the U.S. Environmental Protection Agency performance evaluation program and which have been certified by the cabinet or the Environmental Protection Agency.

Section 8. Total Trihalomethane Levels Exceeded. If the average annual TTHM level is exceeded, the community water system shall notify the public pursuant to 401 KAR 8:070.

Section 9. Requirements for Making Significant Treatment Modifications. Before a system makes any significant modification in its existing treatment process in order to achieve compliance with this administrative regulation, the system shall obtain written cabinet approval of a detailed plan for the [~~such~~] modification. A [~~Any~~] plan to modify a disinfection practice shall require the system, at a minimum, to:

(1) Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;

(2) Evaluate its existing treatment practices, consider improvements that minimize disinfectant demand and optimize finished water quality throughout the distribution system;

(3) Provide baseline data from water quality surveys of the distribution system. The [~~Such~~] data shall include the monitoring results for:

(a) Total coliform and fecal coliform bacteria;

(b) Fecal streptococci;

(c) Standard plate counts at thirty-five (35) degrees Celsius [~~centigrade~~] and twenty (20) degrees Celsius [~~centigrade~~];

(d) Phosphate;

(e) Ammonia nitrogen; and

(f) Total organic carbon;

(4) Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications;

(5) Demonstrate an active disinfectant residual throughout the distribution system [~~at all times~~] during and after the modification; and

(6) Provide additional monitoring for chlorate, chlorite, and chlorine dioxide, if [~~when~~] chlorine dioxide is used as a disinfectant.

Section 10. Self-monitoring Reporting Requirements. Each laboratory [~~All laboratories~~] performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification pursuant to 401 KAR 8:040. Public water systems shall submit results to the cabinet, [~~on a form provided by the cabinet,~~] within ten (10) days following the end of the compliance period for which the analysis was completed.

Section 11. Variance Procedures for Total Trihalomethanes. (1) When considered. Applications for a variance from the maximum acceptable contaminant level (MCL) of [~~one tenth (~~]0.10[~~)~~] mg/l will be considered by the cabinet if [~~when~~] the public water system making application presents evidence that:

(a) The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available;

(b) The best treatment method is not technically appropriate or technically feasible for that system; and

(c) Only marginal reduction in TTHM levels would be realized if the treatment methods specified in subsection (2) of this section were utilized.

(2) Best technology. The following technology, treatment techniques or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered the best available:

(a) The use of chloramines as an alternate or supplemental disinfectant or oxidant;

(b) The use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;

(c) Improved clarification for THM precursor reduction;

(d) Moving the point of chlorination to reduce TTHM formation and, if [~~where~~] necessary, substituting chloramines, chlorine dioxide or potassium permanganate for the use of chlorine as a preoxidant; and

(e) The use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently, at dosages not to exceed ten (10) mg/l on an annual average basis.

(3) When cabinet will grant variance. The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques are not available and effective, will consider a variance under the following conditions:

(a) Granting the variance will not result in an unreasonable risk to health; and

(b) The public water system proposes a compliance schedule, within one (1) year of the date the variance is granted, which examines the technological, economic and reduction feasibility of one (1) or more of the following treatment methods:

1. Introduction of off-line water storage for THM precursor reduction;

2. Aeration for TTHM reduction, where geographically and environmentally appropriate;

3. Introduction of clarification where not currently practiced;

4. Consideration of alternate sources of raw water; and

5. Use of ozone as an alternate or supplemental disinfectant or oxidant.

(c) The public water system implements [~~such~~] quality control measures [~~as~~] the cabinet may require during the period ending on the date it complies with this administrative regulation.

(d) If the cabinet determines that a treatment method identified in 401 KAR 8:500, Section 11(3)(b) is technically feasible, economically reasonable, and will achieve TTHM reductions commensurate with the costs incurred with the installation and use of the [~~such~~] treatment method, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule. The cabinet's decision shall be based upon studies performed by the system and other information submitted to the cabinet by the system in accordance with 401 KAR 8:060.

(4) [~~In no event shall~~] The cabinet shall not require a system to install or use a treatment method not described in this section to obtain or maintain a variance from the TTHM regulation or in connection with any variance compliance schedule.

[~~Section 12. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact:: John T. Smither

(1) Type and number of entities affected: This regulation affects community public water systems serving populations larger than 10,000, and consecutive community public water systems where the combined population of the water system supplying the water and the water systems purchasing the water is greater than 10,000. Currently, this is about 258 public water systems, with 139 supplying water and 119 systems purchasing water.

(a) Direct and indirect costs or savings to those affected: Systems testing for trihalomethanes and not finding violations of the maximum contaminant levels will not be affected by this amendment. Consecu-

tive systems with violations will be affected. At this time four public water systems are in violation of THM maximum contaminant levels, and are liable for remedial action under current regulations. The proposed amendment will make systems partially liable for remediation of violations in a purchasing system.

1. First year: Conversion of public water systems from chlorine to some other disinfection system can vary with the type of disinfection system converted to, as well as the size of the system involved. One system which recently converted to chloramines incurred an initial cost of about $125,000. Another system which converted to chlorine dioxide estimated an additional cost of $.30 (thirty cents) per household per month.

2. Continuing costs or savings: Additional costs will continue to be incurred by customers to pay for capitalization of the initial outlay as well as ongoing testing. Ten cents to thirty cents per household per month seems likely.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs. Public water systems are monopolies so there is no effect on competition.

(b) Reporting and paperwork requirements: This amendment will not affect reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This amendment will have no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or indirect costs or savings.

1. First year: No costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment will not increase or decrease reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state revenues. Local revenues may be affected if the public water system is owned by local government.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Trihalomethanes are best dealt with on a distribution system wide basis. The current regulation makes purchasing systems totally responsible for trihalomethane violations even though a significant portion of the problem is created by the seller. The proposed amendment seeks to rectify this inequity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: This proposed amendment attempts to allow the Cabinet to deal with trihalomethane violations in an effective and equitable manner. It will allow costs for remediation to be spread over a larger group of customers therefore holding down costs per household. It will also hold all public water systems responsible for trihalomethane problems to which they contribute. Under the current regulation, purchasing systems which boost chlorination and realize trihalomethane violations are solely responsible for remediation even though they may contribute only a small portion of the problem. This amendment will help rectify this problem.

Tiering: Was tiering applied? Yes. This regulation is tiered, although the proposed amendment only applies to a specific group of community public water systems.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Some public water systems are owned by, or affiliated with local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects community public water systems serving over 10,000 people either individually or consecutively.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: Public water systems owned by local governments may incur some costs as a result of this regulation, however, in most cases any costs will be passed through to the consumer of the water.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.29 allows states to treat consecutive public water systems as a single system. Kentucky has elected to use this option for trihalomethane regulation. This is not a mandatory provision but is expressly allowed.

2. State compliance standards. The Cabinet treats consecutive public water systems serving over 10,000 persons the same as a single system serving over 10,000 persons for trihalomethane regulations.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 141.29 allows states to treat interconnected systems as a single system.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. 40 CFR 141.30 does not require trihalomethane testing in any system serving fewer than 10,000 persons although 40 CFR 141.29 allows this to be required in consecutive systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Cabinet believes that the dynamics of consecutive distribution systems serving over 10,000 people are the same as a single distribution system serving over 10,000 persons for the purpose of trihalomethane formulation. Therefore, the Cabinet believes that such systems should be tested for trihalomethanes.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Wtare
(Proposed Amendment)

401 KAR 8:600. Secondary standards.

RELATES TO: KRS Chapter 224, 40 CFR Part 143 (1993)

STATUTORY AUTHORITY: KRS 224.10-100, KRS 224.10-110, 40 CFR 143 (1993), ~~[PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988,]~~ 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.10-110 directs the

cabinet to enforce the rules and regulations adopted by the secretary for the administrative regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising [~~such~~] primary enforcement responsibility. This administrative regulation provides maximum contaminant levels, and requirements for the sampling and testing for contaminants which do not have a direct impact on the health of consumers, but may discourage the utilization of drinking water or discredit the supplies. Provisions for these contaminants are referred to as "secondary standards".

Section 1. Secondary Contaminants. (1) Applicability. All suppliers of water for public and semipublic drinking water systems shall sample for secondary contaminants at the direction of the cabinet.

(2) New sources of water. An analysis for these contaminants shall be performed when a new source of water supply is proposed to the cabinet for preliminary approval pursuant to 401 KAR 8:100. Excessive amounts of these contaminants or excessive costs of their removal may be grounds for rejection of the proposed source of water.

(3) Existing sources of water. Existing producers of water shall sample for, and make analysis for, the secondary contaminants listed in this section, at the frequency prescribed by the cabinet. Treatment shall be adequate to assure that the secondary contaminant level does not exceed the maximum level limits set forth in this administrative regulation.

(4) Sampling point. Samples may be taken from a free-flowing tap in the distribution system, except that hydrogen sulfide (H_2S) shall be measured at the entry point to the distribution system.

(5) Secondary contaminant maximum levels. The following lists the maximum allowable levels of secondary contaminants:

CONTAMINANT	LEVEL
Aluminum	0.05 TO 0.2 MG/L
Chloride	250 mg/l
Color	15 color units
Copper	1.0 mg/l
Corrosivity	Noncorrosive
Fluoride	2.0 mg/l
Foaming agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/l
Odor	3 threshold odor number
pH 6.5-8.5	
Silver	0.1 mg/l
Sulfate	250 mg/l
Total dissolved solids (TDS)	500 mg/l
Zinc	5 mg/l

[~~Chemical Symbol | Name | Unit(2) | Maximum Level~~

Cl	Chloride	mg/l	250.0
	Color(1)	Platinum Cobalt	15.0
Cu	Copper	mg/l	1.0
	Corrosivity		Noncorrosive
	Fluoride	mg/l	2.0
H_2S	Hydrogen Sulfide	mg/l	0.05
Fe	Iron	mg/l	0.3
Mn	Manganese	mg/l	0.05
	Odor(1)	Threshold Number	3.0
	Phenols	mg/l	0.001
SO_4	Sulfate	mg/l	250.0
Zn	Zinc	mg/l	5.0
TDS	Total Dissolved Solids	mg/l	500.0

(1)Surface supplies only.
(2)Milligrams per liter (mg/l) is the same as parts per million (ppm).]

(6) Sample collection and measurement technique. Samples shall be taken and analyzed in accordance with 40 CFR 143.4, hereby adopted without change. [~~the methods set forth in Standard Methods.~~]

(7) Secondary contaminants maximum limits exceeded. If any of the secondary contaminant maximum allowable levels limit as set forth in this administrative regulation [~~herein~~], is [~~are~~] exceeded by a supplier of water, the cabinet may direct that supplier to modify the treatment procedure or to locate a more suitable source of water.

(8) Public water systems which exceed secondary maximum contaminant levels for fluoride, but do not exceed the primary maximum contaminant level as stipulated in 401 KAR 8:250, shall notify the public pursuant to 401 KAR 8:070, except the notice required for all billing units shall be annual, the notice to all new billing units shall be at the time service begins, and the state public health officer shall be notified.

[~~Section 2. Standard Methods for the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation is hereby incorporated by reference. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.~~

~~Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.~~]

E. DOUGLAS STEPHAN, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 15, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Tuesday, January 25, 1994 at 1:30 p.m. (EST), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by January 20, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, (4:30 p.m. (EST)) January 25, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet

will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before January 20, 1994 between 8 a.m. and 4:30 p.m. (EST).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation applies to approximately 825 public and semipublic water systems. This number may change from month to month.

(a) Direct and indirect costs or savings to those affected: The amendment to this regulation will add to the list of secondary contaminants which must be monitored.

1. First year: New sources for public water systems will have to be analyzed for additional secondary contaminants. Other public water systems will be tested when necessary. These tests will represent a cost of less than $100.

2. Continuing costs or savings: Unless a problem comes up, additional monitoring will not occur more than annually.

3. Additional factors increasing or decreasing costs (note any effects upon competition): If a public water system exceeds an MCL for a secondary contaminant it must provide treatment to reduce the contaminant or find a different source of water.

(b) Reporting and paperwork requirements: Results of monitoring must be submitted to the Cabinet.

(2) Effects on the promulgating administrative body: The amendment to this regulation will have no substantial effect on the promulgating administrative body. Presently, the Cabinet is maintaining records and this regulation requires that it add a few more parameters to those records.

(a) Direct and indirect costs or savings: This amendment will bring no measurable cost or savings.

1. First year: No measurable effect.

2. Continuing costs or savings: No measurable effect.

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The amendment to this regulation will require a few more parameters on secondary contaminant reports.

(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation tracks federal requirements. Alternative methods would be inconsistent with federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or government policy conflicts, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Secondary contaminants, while not injurious to public health, can be very unpleasant for drinking water. Therefore, all new sources of water are screened. If contaminants are found they must either be treated or a different source of water found.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation relates to public water systems. Local governments frequently own or operate public water systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the provision of potable drinking water.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation requires monitoring for secondary contaminants. Public water systems will usually pass through the cost of this monitoring to the consumer of water. However, a local government which owns a public water system could elect to absorb some or all of these costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 143.3 as amended at 56 Federal Register 3597.

2. State compliance standards. This regulation sets out monitoring and testing requirements for certain secondary contaminants.

3. Minimum or uniform standards contained in the federal mandate. The Federal mandate sets out monitoring and testing requirements for certain secondary contaminants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards are the same.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(Proposed Amendment)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:

(a) A cleaning schedule for various locations and items in the jail.

(b) A schedule for inspections by the jailer.

(c) A schedule for trash and garbage removal.

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh and purified air circulating within inmate living and activity areas.

(5) The jail shall furnish clean sanitized bedding to inmates except

in holding areas and unless it is determined to be detrimental to a particular inmate. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress.

(b) One (1) mattress cover.

(c) One (1) blanket, when conditions require.

(d) One (1) sheet.

(e) One (1) pillow.

(f) One (1) pillowcase.

(6) Inmate bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each inmate shall be issued a clean towel upon admission to an inmate living areas. Towels shall be laundered every fourth day.

(8) All floors, toilets, and sinks in the jail shall be washed daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) All inmates assigned to inmate living areas shall be issued or permitted to obtain the following hygienic items:

(a) Soap.

(b) Toothbrush.

(c) Toothpaste.

(d) Toilet paper.

(e) Female sanitary supplies (where applicable).

Indigent inmates shall be furnished these items by the jail.

(11) All inmates shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. [~~No inmate shall be forced to shave except for medical purposes and under the specific orders of the medical authority.~~]

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all inmates. [~~Inmates shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.~~]

(13) All inmates shall be provided shower facilities within twenty-four (24) hours of admission. Inmates shall be permitted to shower daily.

(14) All inmates in the jail shall be provided with hot and cold running water in showers and lavatories.

(15) As required in KRS 441.064, the jail shall be inspected by the Department of Corrections biannually.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: November 23, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron

(1) Type and number of entities affected: County jails.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposed administrative regulation meets current federal and state court requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No impact on expenditures or revenues.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(Proposed Amendment)

501 KAR 3:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) Any person in need of emergency medical attention shall not be admitted to the jail until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the jail staff member on duty.

(2) The jail staff shall assure that each inmate is committed under

proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charge - cite five (5) digit UOR number;
(d) Authority ordering commitment;
(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Spouse or next of kin;
(o) Emergency contact (name, relation, address, telephone number);
(p) Employer, place of employment, telephone number;
(q) Social Security number;
(r) Health status (including current medications, known allergies, diet or other special medical needs);
(s) Blood type, if known;
(t) The name of any known person in the jail who might be a threat to the arrestee; and
(u) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).

(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall be done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(5) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property which is taken from the inmate upon admission shall be listed by complete description on a receipt form, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate and kept for the jail record.

(b) If the inmate is in an inebriated state, is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

(6) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. Inmates may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect the inmate's rights in accordance with court decisions regarding religion.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each inmate.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;
(b) Rules of inmate conduct;
(c) Disciplinary procedures;
(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and
(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Department of Corrections personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 22, 1993
FILED WITH LRC: November 23, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: John T. Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John T. Damron
(1) Type and number of entities affected: County jails.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposed administrative regulation meets current federal and state court requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. County jails and fiscal courts.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No impact on expenditures or revenues.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised November 29 [~~October 15~~], 1993, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services [~~(Amended 10/15/93)~~]
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time [~~(Amended 10/15/93)~~]
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.1 [~~18.4~~]	Classification of the Inmate (Amended 11/29/93)
18.5	Custody/Security Guidelines (Amended 11/29/93)
18.6	Classification Document
18.7	Transfers (Amended 11/29/93)
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers (Amended 11/29/93)
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures

18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program
20.1 Educational Programs and Educational Good Time
21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST) [~~(Added 10/15/93)~~]
21.2 Phase I: Program Selection Assessment Criteria [~~(Added 10/15/93)~~]
21.3 Program Schedule - Phase II and Phase III [~~(Added 10/15/93)~~]
21.4 Platoon Size and Composition [~~(Added 10/15/93)~~]
21.5 Physical Conditions Program Component [~~(Added 10/15/93)~~]
21.6 Group and Individual Counseling [~~(Added 10/15/93)~~]
21.7 Drug and Alcohol Abuse Counseling and Treatment [~~(Added 10/15/93)~~]
21.8 Work Programs Component [~~(Added 10/15/93)~~]
21.9 Education and Life Management [~~(Added 10/15/93)~~]
21.10 Auxiliary Services [~~(Added 10/15/93)~~]
21.11 Offenses and Penalties [~~(Added 10/15/93)~~]
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program (Amended 11/29/93)
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 Drug and Alcohol Testing of Offenders
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 29, 1993
FILED WITH LRC: November 29, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1994, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601 or Louis Smith, Office of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised December [~~October~~] 15, 1993 are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-12-01	Duty Officer Responsibilities [~~(Amended 10/15/93)~~]
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
[~~LLCC 10-03-09~~	~~Duties and Responsibilities of Building 1 and 2 Officer (Deleted 12/15/93)~~]
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-01-02	Pretrial Contract Hold Status [~~(Added 10/15/93)~~]
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call [~~(Amended 10/15/93)~~]
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Pharmacy Personnel
LLCC 15-03-03	Distribution, Procurement and Control
LLCC 15-03-04	Inmate - Self Administration of Medication
LLCC 15-03-05	Use of Psychotropic Medications
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities (Amended 12/15/93)
LLCC 16-03-01	Inmate Legal Services
LLCC 18-01-01	Inmate Correspondence
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03	Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04	Parole Hearings [~~(Amended 10/15/93)~~]
LLCC 20-01-01	Personal Property Control
LLCC 20-04-01	Inmate Canteen Committee
LLCC 20-04-02	Inmate Canteen [~~(Amended 10/15/93)~~]
LLCC 20-04-03	Canteen Purchase Limits
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays [~~(Amended 10/15/93)~~]
LLCC 20-05-03	Theft of Inmate Personal Property
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process

LLCC 22-01-01 OJT/Job Assignments
LLCC 23-01-01 Academic School
LLCC 26-01-01 Religious Services
LLCC 26-01-02 Prayer
LLCC 28-01-01 Privileged Trips
LLCC 28-03-01 Temporary Release/Community Center Release
LLCC 28-04-01 Preparole Progress Report
LLCC 28-04-02 Parole Eligibility Dates

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: December 14, 1993
FILED WITH LRC: December 14, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1994, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 290 employees of the Luther Luckett Correctional Complex, 1061 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:080. Department of Corrections Manuals.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections [~~Cabinet~~] the following policies and procedures are [~~revised on May 14, 1993 and are~~] incorporated by reference on November 29, 1993 and hereinafter shall be referred to as Department of Corrections [~~Cabinet~~] Manuals. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections [~~Cabinet~~], State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

Offender Records Manual - None
Stock Procedure Manual - None
Food Services Manual - None [~~(Added 5/14/93)~~]
Classification Manual - (Amended 11/29/93) [~~None~~]
Diet Manual

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 29, 1993
FILED WITH LRC: November 29, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1994, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Proposed Amendment)

601 KAR 11:030. Restrictions and endorsements on commercial driver's licenses.

RELATES TO: KRS Chapter 281A
STATUTORY AUTHORITY: KRS 281A.040
NECESSITY AND FUNCTION: KRS 281A.170 sets forth some of the restrictions which may be placed on a commercial driver's license. It further allows the Transportation Cabinet to impose other restrictions as necessary. The standard additional restrictions which may be imposed are set forth in this administrative regulation. While KRS 281A.170(2)(c)4 indicates that the restrictions not listed in statute shall be identified as 1 - 13, the numeric restriction identifiers will relate only to physical restrictions as is currently done on an operator's license. Alpha identifiers were used in KRS 281A.170 for restrictions relating to commercial vehicle equipment. The National Driver Register has requested that additional commercial vehicle restrictions be identified. For consistency, alpha restrictions will be used. Therefore, both alpha and numeric restrictions in addition to the "K" = no airbrakes; "I" = intrastate driving only and "S" = school buses only restrictions listed in KRS 281A.170 are identified in this administrative regulation. KRS 281A.150(8) refers to a "P" restriction which is not established by KRS 281A.170. To ensure that a person is able to use a twenty (20) dollar commercial driver license authorized by KRS 281A.150(8) only to operate the buses identified there, the "S" restriction is expanded in this administrative regulation to include all three (3) types of buses identified in KRS 281A.150(8).

Section 1. Numeric Restrictions. The numeric restrictions regularly used on a commercial driver's license shall relate to the physical restrictions of the commercial driver. The numeric restrictions shall be the following:

"1" - corrective lenses required to be worn.
"2" - restricts the driver to a vehicle equipped with power brakes.
"3" - restricts the driver to a vehicle equipped with an automatic transmission.
"4" - restricts the driver to daylight driving only.
"5" - restricts the driver to a vehicle equipped with power steering.
"6" - restricts the driver to a vehicle equipped with a hand accelerator.
"7" - restricts the driver to a vehicle equipped with a hand brake.
"8" - other restrictions imposed.

Section 2. Alpha Restrictions. The alpha restrictions regularly used on a commercial driver's license shall relate to the restrictions on the types of commercial vehicle the driver is allowed to operate with the exception of the "K", "I", and "S" restrictions set forth in KRS 281A.170(2)(c)4, the alpha restrictions shall be the following:

"L" - does not include a class "A" bus.
"J" - does not include a class "A" or "B" bus.
"O" - does not include tractor semitrailer style vehicles.

Section 3. "S" Restriction. The "S" restriction shall be used to designate a commercial driver who is restricted to operating a school bus, a church bus, a bus operated by a mass transit authority created under the provisions of KRS Chapter 96A or bus operated under a nonprofit bus certificate established pursuant to KRS 281.619.

Section 4. "F" Restriction. The "F" restriction shall appear only on the commercial driver's license issued on a limited basis to an employee of a farm-related service industry as set forth in 601 KAR 11:080.

NORRIS BECKLY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: November 16, 1993
FILED WITH LRC: November 23, 1993 at 1 p.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 28, 1994 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 10th Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 23, 1994 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 23, 1994. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on January 28, 1994. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 125,000 estimated commercial drivers in Kentucky.
(a) Direct and indirect costs or savings to those affected: None as a result of changes to this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (Note any effects upon competition):
(b) Reporting and paperwork requirements: None as a result of the changes to this administrative regulation.
(2) Effects on the promulgating administrative body: The Transportation Cabinet will be able to clearly demonstrate all restrictions and endorsements on a commercial driver's license. This administrative regulation change gives public notice of the of the endorsement made necessary by the promulgation of 601 KAR 11:080.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The decision to implement the permissive limited commercial driver's license for a farm-related industry, mandated that the administrative regulation setting forth the endorsements and restrictions be amended to list this endorsement. KRS Chapter 13A

would allow no other action.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: KRS 281A.170(2)(c)4.

(a) Necessity of proposed regulation if in conflict: The statute requires that the restrictions not listed in statute shall be identified numerically. However, in Kentucky numeric restrictions have always applied to physical restrictions. KRS 281A.170 uses alpha identifiers for restrictions relating to commercial vehicle equipment. For consistency, additional needed commercial vehicle restrictions are listed with alpha designators in spite of the minor conflict with state law.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, but it was confusing to persons used to dealing with restrictions.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Every person with a commercial restriction or endorsement should be identified the same as any other person with the same restriction or endorsement.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

707 KAR 1:170. Identification of children and youth with disabilities.

RELATES TO: KRS 156.160, 157.200, 157.360, 158.030, 158.100, 158.6451(e), 160.290, 167.150, 20 USC 1232e,g, 1401-1418, 1478(a)

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for the location, identification and evaluation of children and youth who may be disabled and in need of specially designed instruction and related services. This administrative regulation is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Educational history" means existing school information about a child or youth including schools attended, discipline records, attendance patterns, and grades.

(2) "Evaluate" means procedures used to determine if a child or youth has a disability and the nature and extent of the need for specially designed instruction and related services.

(3) [~~(2)~~] "Identify" means to collect and use all available information to decide if a child or youth has a suspected disability and possibly needs specially designed instruction and should be referred for evaluation.

(4) [~~(3)~~] "Locate" means to obtain the name and determine the physical location of any child or youth who may have a disability and need specially designed instruction and related services.

(5) [~~(4)~~] "Screening" means the procedures established by each local education agency under KRS 158.6451, 703 KAR 4:020, and 704 KAR 4:020.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for identification, location, and evaluation of any child or youth residing within the jurisdiction of the LEA who may be disabled, regardless of the severity of the disability, and in need of specially designed instruction and related services. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Child Find System. (1) Each LEA shall plan and implement a child find system to locate, identify, and evaluate each child or youth:

(a) Whose age is birth through twenty-one (21);

(b) Who resides in a home, facility, or residence within the LEA's geographical boundaries;

(c) Who is either out of school or in school;

(d) Who may have a disability; and

(e) Who needs specially designed instruction and related services in order to receive a free appropriate public education.

(2) Each LEA's child find system shall:

(a) Have activities to locate, identify, and evaluate children and youth whose age is birth through twenty-one (21);

(b) Be available during the normal business day; and

(c) Include opportunities for parent and community involvement.

(3) At least once during a year, each LEA shall actively seek and locate children and youth who may have disabilities by:

(a) Conducting awareness activities with the general public and with LEA personnel to notify them of the need to find children and youth with disabilities who need specially designed instruction and related services;

(b) Contacting private and parochial schools and other programs and agencies providing services to children and youth to notify them of the availability of specially designed instruction and related services and methods of referral; and

(c) Conducting screening activities to identify any child or youth who may need further evaluation to determine if the child or youth has a disability and needs specially designed instruction and related services.

(4) Each LEA shall use the results from any screening and other procedures including those established under 703 KAR 4:020 and 704 KAR 4:020 relating to the Kentucky Education Reform Act (KERA), and school enrollment information, and educational history as sources to identify children and youth who may have a disability and need specially designed instruction and related services. This information may be used if:

(a) The LEA's screening program checks the following developmental and skill areas:

1. Physical functioning;
2. Communication functioning;
3. Cognitive functioning;
4. Social and emotional competence; and
5. Academic performance.

(b) The LEA's screening program is nondiscriminatory and:

1. Applies established criteria for passing and not passing each screening activity;

2. Includes instruments and techniques appropriate for the various modes of communication and languages in the community;

3. Uses only those persons who are qualified and appropriately trained according to the user's manual or directions to conduct screening activities;

4. Includes methods for maintaining individual information from screening results; and

5. Includes activities which occur on a regularly scheduled basis and as needed.

(5) Each LEA shall conduct identification activities to follow up on the results of location activities including:

(a) Contacting the parent of the child or youth to obtain additional information;

(b) Reviewing information available from the parent of the child or youth and any other information available through school or other agency records to determine the need for further action; and

(c) Referring the child or youth to an age-appropriate school or

service agency for additional services; and

(d) Informing parents of the process for referral of a child or youth suspected of having a disability.

Section 4. Public Notice. (1) Each LEA shall provide public notice before any major identification, location, and evaluation activity.

(2) Each LEA shall use methods of announcing child find activities that distribute the notice to reach parents who are located within the geographical area of the LEA's jurisdiction.

(3) Each LEA shall use printed and oral announcements of child find activities in the native language or other modes of communication of the various populations in the geographical boundaries.

Section 5. Evaluation. Each LEA shall conduct or make arrangements for a full and individual, nondiscriminatory evaluation to determine if an identified child or youth has a disability and needs specially designed instruction and related services. A child or youth suspected of having a disability shall be evaluated in all areas related to the suspected disability at no cost to the parent.

Section 6. Child Tracking. (1) Each LEA shall have a practical method of determining (tracking):

(a) Which children and youth have a disability, have IEPs, and are receiving specified services on the IEP;

(b) Which children and youth need specially designed instruction and related services but are not currently receiving these services; and

(c) Which children and youth are in the process of identification, location, evaluation and possible placement.

(2) The tracking system shall follow each child or youth through the process of identification, evaluation, educational placement and provision of a free appropriate public education and shall include:

(a) The current status of each child or youth in the identification, location, referral, evaluation, eligibility, placement, review, and reevaluation process at any given time;

(b) The name, current address, sex, date of birth, disability, current or known service providers, representative for educational decision making, and relationship of the representative to the child or youth;

(c) Information needed for required state and federal data reports and requests; and

(d) Confidentiality of data collected, maintained and used.

(3) Each LEA shall monitor the tracking system to determine accuracy of information.

Section 7. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 13, 1993

FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth Warlick

(1) Type and number of entities affected: 176 local school districts, two state schools (Kentucky School for the Blind and Kentucky School for the Deaf) and approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1411(d); 1412(2)(C); 1414(a)(1)(A); 34 CFR Part 300.220

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that all children residing in the state who are disabled, regardless of the severity of their disabilities, and who are in need of specially designed instruction and related services are identified, located, and evaluated.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for child identification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation

addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

707 KAR 1:180. Due process procedures.

RELATES TO: KRS 157.200, 157.360, 158.030, 158.100, 167.150, 20 USC 1232g, 1401-1418
STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.210, 157.220, 157.260, 167.015
NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Consent" means that:
(a) The parent of the child or youth has been fully informed of all information relevant to the activity for which consent is sought;
(b) The parent of the child or youth understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
(c) The parent of the child or youth understands that the granting of consent is voluntary and may be revoked at any time.
(2) "Emancipated youth" means:
(a) A youth who has reached the age of majority, eighteen (18), and no evidence exists that there is a court order or legal document showing the parent as the guardian or youth's representative in educational matters; or
(b) A youth who is married.
(3) "Independent evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child or youth in question.
(4) "Native language of the parent of a child or youth" means the primary language used in the home, that is, the language most frequently used for communication by the parent of the child or youth.
(5) "Parent" means a parent, a guardian, a person acting as a parent of a child or youth, a permanent foster parent or a surrogate parent appointed by the LEA as required by this administrative regulation. The term does not include a guardian who is an employee of the Commonwealth if the child or youth is a ward of the state.
(6) "Procedural safeguards" means all rights guaranteed to the parent and the child with disabilities under Subpart E of the Individuals with Disabilities Education Act (IDEA).
(7) "Public expense" means that the LEA either pays for the full cost of the evaluation or makes sure that the evaluation is otherwise provided at no cost to the parent.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation to address procedural safeguards. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Timelines. Each LEA shall establish and implement reasonable timelines for the identification, evaluation, and placement of children and youth suspected of having disabilities to occur without delay. The total amount of time from the date of the completed referral until the date services are initiated, excluding the number of days the LEA is waiting for parental decisions, shall not exceed sixty (60) school days.
(1) An admissions and release committee (ARC) meeting as described in Sections 4 and 5 of this administrative regulation, to complete the individual education program (IEP), as defined in 707 KAR 1:210, shall be held within thirty (30) calendar days of a meeting when an ARC determines, based on a full and individual evaluation, that a child or youth is eligible for specially designed instruction and related services. This timeline shall be included within the sixty (60) school day timeline above.
(2) The ARC shall develop an IEP for each child or youth with a disability before specially designed instruction and related services are provided.
(3) The IEP for initial placement shall be implemented as soon as possible after notice and consent for initial placement.
(4) A meeting for the annual review of the IEP shall be held within twelve (12) calendar months of the date of the meeting when the IEP was developed.
(5) For each child or youth receiving specially designed instruction, the IEP shall be implemented as soon as possible after the ARC meeting where the IEP is reviewed and revised.
(6) The LEA shall have in effect an IEP for each child or youth with a disability who needs specially designed instruction and related services at the beginning of each school year.
(7) The LEA's timelines for reevaluation of children and youth currently receiving specially designed instruction services shall not exceed thirty-six (36) calendar months from the date the ARC convened and determined eligibility for specially designed instruction and related services.

Section 4. The ARC Membership. The LEA shall establish admissions and release committees (ARCs) with appropriate membership that addresses the process of identification, evaluation, and placement of children and youth and the provision of free appropriate public education for children and youth with disabilities.
(1) The LEA shall ensure that each ARC meeting includes the following participants:
(a) Parent;
(b) Child or youth, where appropriate;
(c) Regular education teacher of the child or youth;
(d) Teacher of exceptional children who is knowledgeable of the disability or suspected disability;
(e) Administrator or designee, other than the child's teacher, who is qualified to provide or supervise the provision of specially designed instruction. The administrator or designee shall have the authority to commit personnel and fiscal resources;
(f) Others as requested by any member of the ARC. Teacher organization officials shall not be authorized to participate in ARC meetings to represent teachers.
(2) For a child or youth who has been evaluated for the first time, the LEA shall ensure that one (1) of the following participates in the ARC:
(a) A member of the evaluation team; or
(b) The representative of the agency, the child or youth's teacher, or some other person knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.
(3) If the purpose of the ARC is the consideration of transition services, the LEA shall invite the youth and a representative of any other agency that is likely to be responsible for providing or paying for the transition services.
(a) If the youth does not attend the ARC meeting, the LEA shall take other steps to ensure that the youth's preferences and interests

are considered; and

(b) If an agency is invited but does not send a representative to the ARC meeting, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(4) If the purpose of the ARC is to send or receive a child to or from a private, LEA, public or state operated program, the membership shall include a representative of the other program.

Section 5. The ARC Process. Each LEA shall ensure that each ARC follows due process procedures to ensure that children and their parents are guaranteed procedural safeguards and that meetings are initiated for the purposes of:

(1) Acting on referrals as follows:

(a) Review complete, written referrals;

(b) Determine the need to evaluate;

(c) Determine the need for written parental consent to evaluate.

(2) Act on evaluation as follows:

(a) Determine that a full and complete evaluation was conducted;

(b) Determine if the child or youth can be classified as having a disability; and

(c) Develop a remedial plan if the ARC determines the child or youth is not eligible for specially designed instruction or related services.

(3) Developing, reviewing, or revising an IEP as follows:

(a) Ensure that the IEP meets regulatory requirements;

(b) Review and revise the IEP at least annually or as requested by any ARC member.

(4) Determining placement as follows:

(a) Determine placement in the least restrictive environment;

(b) Determine placement at least annually, or as the IEP is revised;

(c) Propose or refuse to provide services based on the current and complete IEP in the place determined;

(d) Determine the need for written parental consent for services;

(e) Ensure that services are provided.

(5) Acting on reevaluation as follows:

(a) Ensure that a full and complete evaluation is conducted at least every thirty-six (36) months or as requested by any ARC member;

(b) Review the full and individual evaluation information; and

(c) Propose and refuse continuation or change in placement.

Section 6. Notice. The LEA shall provide written notices to parents within LEA established timelines and procedures each time the LEA proposes or refuses to initiate, continue, or change the identification, evaluation, placement or provision of a free appropriate public education.

(1) Notice shall be provided at the point of:

(a) Referral as a possible candidate for programs for specially designed instruction and related services;

(b) Individual initial evaluation;

(c) Initial placement;

(d) Continued or change in placement;

(e) Reevaluation; and

(2) The written notice given to parents shall include, as follows:

(a) A full explanation of all the procedural safeguards available to the parents under Subpart E of Part B of IDEA;

(b) A description of the action proposed or refused by the LEA;

(c) An explanation of reasons the LEA proposes or refuses to take action;

(d) A description of any options the LEA considered and the reasons those options were rejected;

(e) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(f) A description of any other factors relevant to the LEA's proposal or refusal; and

(g) Information that if the parent prevails in administrative hearings or court action, courts may award reasonable attorney fees and costs.

(3) Additional requirements.

(a) The LEA shall provide written notices which are understandable to the general public.

(b) The LEA shall determine the language or mode of communication used by the parent of the child or youth and provides the notice in that language or mode of communication unless clearly not feasible to do so.

(c) If the native language or other mode of communication is not a written language, the LEA shall ensure:

1. That the notice is translated orally or by other means to the parent in his native language or other mode of communication;

2. That the parent understands the content of the notice; and

3. That there is written evidence that these requirements have been met.

(4) Notice of ARC meeting. The LEA shall take steps to ensure that one (1) or both of the parents of the child or youth are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed upon time and place;

(c) The notice of an ARC meeting sent to parents shall indicate:

1. The purpose of the meeting;

2. The date and time and location of the meeting;

3. How the parent indicates the need for an alternative meeting date, time, or location;

4. The names and titles of all persons who are expected to attend;

5. Information stating that the parent of the child or youth may bring persons to give them aid or support;

a. That if the parent selects another person to act as an agent (attorney or advocate), the LEA is to be informed in writing that person has authority to represent him in educational matters; and

b. That a person selected to act as an agent during a meeting shall not be empowered to provide or deny written consent and that the LEA only recognizes one (1) agent at any given time; however, the parent of the child or youth may replace an agent at will;

6. If a purpose of the ARC meeting is the consideration of transition services, the notice shall also:

a. Indicate this purpose;

b. Indicate that the LEA will invite the child or youth; and

c. Identify any other agency that will be invited to send a representative.

(d) When the LEA is unable to convince the parents that they should attend, a meeting may be conducted without a parent in attendance, provided the LEA maintains records of attempts to arrange a mutually agreed-on time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of these calls;

2. Copies of correspondence sent to the parents and any responses received;

3. Detailed records of visits made to the parents' home or place of employment and results of those visits.

(e) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English and document the action.

(f) If parents do not attend the ARC meeting, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) Parents shall receive a copy of the IEP regardless of whether they attend the ARC meeting.

Section 7. Consent. The LEA shall obtain written, informed

parental consent prior to initial evaluation and initial provision of services.

(1) Consent to evaluate.

(a) The LEA shall obtain written parental consent before using any procedures selectively with an individual child or youth to determine if the child or youth has a disability and needs specially designed instruction and related services.

(b) The consent for initial evaluation shall include information about individual evaluation procedures that will be used selectively with the child or youth in all areas related to the suspected disability.

(c) The consent for initial evaluation shall explain that the full and individual evaluation information will be used to determine:

1. If the child or youth has a disability; and

2. The extent and nature of the specially designed instruction and related services the child or youth may need in order to receive a free appropriate public education.

(d) The consent shall list the records (if any) which will be released and to whom.

(2) Consent for placement.

(a) The LEA shall obtain written informed parental consent prior to the initial provision of specially designed instruction and related services.

(b) If a child or youth was receiving specially designed instruction and related services in another LEA within the Commonwealth and enrolls, the enrolling LEA shall implement the IEP and placement from the previous LEA until such time as the IEP is revised, if necessary.

(c) If a child or youth was receiving specially designed instruction and related services in another state and enrolls, the enrolling agency shall implement the IEP from the previous LEA pursuant to the requirements for placement for temporary services.

(3) Consent shall not be used as a condition to continuing to provide specially designed instruction and related services for a child or youth with disabilities.

(4) Denial or revocation of consent.

(a) The LEA shall include in its notice to parents the following:

1. Permission is voluntary;

2. Parents' right to deny permission for initial evaluation and placement;

3. Parents' right to revoke permission at any time.

(b) If the LEA disagrees with the parents' denial or revocation, a due process hearing shall be requested.

Section 8. Independent Evaluation. (1) If a parent disagrees with an evaluation obtained by the LEA, the parent shall have the right to obtain an independent educational evaluation of the child or youth at public expense. An LEA may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(2) If the parent requests, the LEA shall give the parent information about where an independent educational evaluation may be obtained.

(3) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(a) Shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the child or youth; and

(b) May be presented as evidence at a due process hearing regarding the child or youth.

(4) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

(5) Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the LEA uses when it initiates an evaluation.

Section 9. Representation. (1) The LEA shall assure that each child or youth is represented by a parent at all decisionmaking points in the identification, evaluation, and placement process and relative to a free appropriate public education.

(2) Determination of representation.

(a) No later than at the time of referral, the LEA shall determine if the child or youth is:

1. Emancipated and, therefore, represents himself in educational decisionmaking; or

2. To be represented by an adult, such as a parent, a guardian, a person acting as a parent, a surrogate parent, or a permanent foster parent.

(b) The LEA shall verify the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child or youth.

Section 10. Surrogate Parent. The LEA shall protect the rights of a child or youth by assigning a surrogate parent.

(1) The LEA shall protect the rights of a child or youth when:

(a) No parent can be identified;

(b) The LEA, after reasonable efforts, cannot determine the whereabouts of a parent; or

(c) The child is a ward of the state. The child or youth is a ward of the state when all parental rights have been terminated by a court of competent jurisdiction.

(2) The LEA shall not assign a surrogate to an emancipated individual.

(3) The LEA shall terminate a surrogate parent assignment when the parent becomes known or is located or when the youth becomes emancipated.

(4) The LEA shall establish procedures for the selection and assignment of surrogate parents which include:

(a) A method of determining whether a child needs a surrogate parent;

(b) A method for recruiting persons to serve as a surrogate parent;

(c) A method for selecting and assigning a surrogate parent;

(d) Criteria for selection of a surrogate which ensure that the person selected as surrogate:

1. Has no conflict of interest;

2. Has knowledge and skills to represent the child or youth; and

3. Is not an employee of the public agency involved in the education or care of the child or youth.

(e) A surrogate parent shall not be considered an employee of the LEA solely because he is paid by the LEA to serve as a surrogate parent.

(f) A surrogate parent shall not be considered an employee of the Cabinet for Human Resources solely because he is paid by that agency to serve as a foster parent of the child.

(5) The LEA shall provide training to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child or youth.

(6) The LEA shall select persons as surrogate parents who:

(a) Have no conflicting vested interest;

(b) Are committed to personally and thoroughly acquainting themselves with the child and his needs;

(c) Are familiar with the educational system within the state;

(d) Are readily accessible to the child;

(e) Are age eighteen (18) or older; and

(f) Are a United States citizen.

(7) The LEA shall assign a surrogate parent within fifteen (15) school days after determining the need and shall acknowledge the authority of the surrogate to represent the child in all matters relating to the identification, evaluation, and educational placement of the child and provision of a free appropriate public education.

(8) The LEA shall recognize the surrogate parent as the one to exercise all of the educational rights, responsibilities and authorities as a parent of the child or youth, such as the rights to:

(a) Receive notice of proposed or refused actions;

(b) Provide or deny consent;

(c) Participate in ARC meetings as the parent;

(d) Protections under confidentiality;

(e) Request an independent educational evaluation of the child or youth; and

(f) Request an impartial due process hearing and appeal.

Section 11. Due Process Hearings. A parent or LEA may initiate a hearing on any matter concerning the identification, evaluation, placement or the provision of a free appropriate public education. The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information.

(1) Notice of hearing.

(a) The LEA shall inform the parents of:

1. The right to request a due process hearing related to disagreements about identification, evaluation, placement or provision of a free appropriate public education;

2. The procedures for requesting a due process hearing.

(b) Requests for hearings may be initiated by the LEA or the parent or their authorized agent and shall:

1. Be submitted to the Director, Division of Exceptional Children Services, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601;

2. Be in writing and signed by the LEA representative or the parent; and

3. Clearly state:

a. A summary of the facts regarding the disagreement over which the hearing was requested; and

b. The specific issues the LEA or the parent is requesting the hearing officer to decide.

(c) The facts contained in the hearing request shall establish that the disagreement which exists between the LEA and the parent of the child or youth is related to the identification, evaluation, placement, or the provision of a free appropriate public education to a child or youth.

(d) Any hearing request may be cancelled by the hearing officer upon receipt of written documentation from the party requesting the hearing.

(2) Assignment of a hearing officer.

(a) The Division of Exceptional Children Services shall assign a hearing officer to preside at a due process hearing. Written notification of the assignment shall be provided to the hearing officer, the LEA, and the parent.

(b) Within five (5) working days of receipt of notification of the assignment of the hearing officer, the public agency, or the parent shall submit in writing to the Division of Exceptional Children Services reasons for the contention, if any, that the hearing officer would not be impartial. Reasons for dismissal of the hearing officer shall be substantiated prior to the assignment of another hearing officer.

(c) It shall be the responsibility of the Division of Exceptional Children Services to ensure the selection, training, and maintenance of a registry of hearing officers to serve at a due process hearing. Persons to be considered for appointment as impartial hearing officers may come from a variety of working environments, such as public schools, universities and colleges, and outside professional agencies concerned with the education of children and youth with disabilities.

(d) The Division of Exceptional Children Services shall ensure that each public agency maintains a listing of trained individuals and their qualifications from which hearing officer assignments shall be made.

(3) Qualifications of hearing officer.

(a) The competencies of a hearing officer shall include:

1. Minimum of Rank I in education or special education or equivalent degree in law, psychology or counseling;

2. Attendance at hearing officer training; and

3. Conduction of a hearing within the last three (3) years.

(b) The hearing officer assigned shall not be an employee of a public agency which is involved in the education or care of the child.

(c) The hearing officer shall not appear to have vested interest in the outcome of the hearing.

(4) Authority of the hearing officer.

(a) The hearing officer shall regulate the course of proceedings and the conduct of the parties during the proceedings. The hearing officer shall take all steps necessary to conduct a fair and impartial proceeding to avoid delay, and to maintain order.

(b) The hearing officer may schedule a prehearing conference of the hearing officer and parties.

1. Any party may request the hearing officer to schedule a prehearing. The hearing officer shall decide if a conference is necessary and shall notify all parties.

2. At a prehearing conference, the hearing officer and the parties may consider subjects including:

a. Narrowing and clarifying issues;

b. Assisting the parties in reaching agreements and stipulations; and

c. Clarifying the positions of the parties.

3. A prehearing conference may be conducted by telephone conference call.

4. At a prehearing conference the parties shall be prepared to discuss the subjects listed in subparagraph 2 of this paragraph.

5. At a prehearing conference the hearing officer may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties or may require the parties to do so.

(c) The hearing officer may require parties to state their positions and to provide all or part of the evidence in writing.

(d) The hearing officer may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the hearing officer.

(e) The hearing officer may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(f) The hearing officer may rule on motions and other issues at any stage of the proceedings.

(g) The hearing officer may examine witnesses.

(h) The hearing officer may set reasonable time limits for submission of written documents.

(i) The hearing officer may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(j) The hearing officer may interpret applicable statutes and administrative regulations but may not waive them or rule on their validity.

(k) The hearing officer shall give each party an opportunity to be represented by counsel and by individuals with specialized knowledge or training with respect to the problems of children with disabilities.

(l) The hearing officer shall give each party the right to call as witness individuals with special knowledge or training in the area of disabilities.

(m) The hearing officer or panel shall give each party:

1. An opportunity to present witnesses on the party's behalf; and

2. An opportunity to cross-examine witnesses either orally or with written questions.

(n) The hearing officer shall accept any evidence that he finds is relevant and material to the proceedings and is not unduly repetitious.

(o) Each party shall file with the hearing officer all written motions, briefs, and other documents and shall at the same time, provide a copy to the other parties to the proceedings.

(p) The hearing officer shall monitor timelines to ensure that a

decision and order can be rendered within forty-five (45) days of receipt of the request by the Division of Exceptional Children Services.

(q) The hearing officer may extend the time beyond the specified timelines at the request of either party upon good cause.

(r) The hearing officer may dismiss any request for a hearing if it is determined that there is insufficient factual information available to render a decision on the issue raised within the forty-five (45) day timeline. Dismissal under this subsection shall not preclude either party from requesting a later hearing on the same issue when the necessary information has been acquired.

(5) Arrangements prior to the hearing.

(a) Prior to the due process hearing the LEA shall:

1. Inform the parent of any free or low-cost legal and other relevant services available in the area;

2. Schedule within five (5) calendar days of receipt of hearing officer assignment the hearing at a time, date and location convenient for the agency, parent, and hearing officer;

3. Inform the hearing officer of the existing time, date and location of the hearing;

4. At least fourteen (14) calendar days prior to the hearing, provide the hearing officer and the parent with a written chronology of events leading to the hearing;

5. Make arrangements to provide a tape recorder and stenographer for the hearing to ensure a true and accurate record of the hearing is available in a timely manner. A written verbatim record shall be provided to the hearing officer and to the parent upon request;

6. Inform the parent that the hearing will be closed unless requested to be open by the parent or, if the youth is emancipated, upon request of the youth;

7. Inform the parent of the right to have the child or youth present during the proceedings;

8. Notify the parent and the hearing officer in writing of its intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address and telephone number;

9. At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the parents and to the impartial hearing officer, including:

a. The name, title of all witnesses;

b. The general nature of expected testimony; and

c. All documents and records which may be entered as evidence at the hearing.

(b) All information not disclosed prior to the hearing shall become inadmissible unless the parties agree otherwise.

(c) Prior to the due process hearing the parent shall:

1. Notify the LEA and the hearing officer in writing of his intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address, and telephone number.

2. At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the LEA and to the impartial hearing officer, including:

a. The name, title of all witnesses;

b. The general nature of expected testimony; and

c. All documents and records which may be entered as evidence at the hearing.

3. All information not disclosed prior to the hearing shall become inadmissible unless the parties agree otherwise.

4. Cooperate with the LEA in scheduling a hearing at a time, date and location that is convenient for all parties.

(6) Hearing format.

(a) The hearing officer shall make an introductory statement explaining the format and rules of the hearing request.

(b) The initiating party shall present its opening statement first. The initiating party shall not waive its opening statement.

(c) The noninitiating party shall then make an opening statement. The noninitiating party shall not waive its opening statement.

(d) Following the opening statements, the hearing officer shall direct one (1) party to present its evidence and testimony.

(e) The other party shall then present its evidence and testimony.

(f) Each witness presented shall be subject to cross-examination by the opposing party.

(g) The noninitiating party shall present its closing statement.

(h) The initiating party shall then present its closing statement.

(i) When closing statements have been completed, the hearing officer shall give both parties copies of the appeal procedure and orally explain how an appeal may be requested. The hearing officer shall summarize the procedures for dissemination of the decision.

(7) Funding hearings. The total costs involved in holding a due process hearing, excluding those caused to be incurred by the parents/child, shall be paid for by the public agency.

(a) The hearing officer shall receive a stipend as determined by the Division of Exceptional Children Services and is commensurate with standard department consultant fees.

(b) All expenses associated with the hearing officer's availability shall be reimbursed upon submission of receipts. Included in expenses shall be:

1. Mileage to and from the home of the hearing officer consistent with current state mileage reimbursement;

2. Meals during the time away from home;

3. Lodging at a convenient location, if necessary; and

4. Phone, clerical, and other associated costs.

(8) Subpoena. Any party to a hearing shall have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. Subpoenas may be obtained from the commissioner of education.

(a) Requests for issuance of subpoenas shall be in writing and addressed to the Office of Legal Services. A copy of the request shall also be submitted to the Division Director, Division of Exceptional Children Services.

(b) The subpoenas shall be issued for the named witnesses, and the party requesting the subpoenas shall be responsible for completing them and ensuring proper service.

(c) All costs incurred in compelling the attendance of witnesses, including the cost of service of subpoenas, shall be borne by the party requesting their attendance.

(9) Timelines for the hearing.

(a) No later than forty-five (45) days after the Division of Exceptional Children Services receives a written request, the due process hearing officer's written findings of fact and decision shall be rendered and copies mailed to parties of the action by the hearing officer. A reasonable extension of this time frame may be granted by the impartial due process hearing officer.

(b) At least ten (10) calendar days prior to the hearing, the LEA may make a written offer of settlement to the parents. The LEA shall not submit a copy of this settlement offer to the hearing officer.

(c) No later than seven (7) days prior to the hearing, the hearing officer shall send to the public agency, parent and Division of Exceptional Children Services via certified mail, a letter confirming the date, location and time of the hearing.

(d) No later than fourteen (14) calendar days following receipt of the verbatim transcript, the hearing officer shall send written findings of fact and decisions via certified mail to the LEA and parent, with a copy of the decision to the Division of Exceptional Children Services.

(e) Within fourteen (14) calendar days of rendering a decision and order, the hearing officer shall send all evidence, including tapes and transcripts, to the Division of Exceptional Children Services.

(10) The decision of the hearing officer shall be final unless either party appeals the decision.

(11) Copies of the hearing officer decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

Section 12. Exceptional Children Appeals Board. (1) There is hereby established for the Kentucky Department of Education the Exceptional Children Appeals Board. The commissioner of education shall appoint for each appeal filed three (3) persons from the registry of trained hearing and review officers to serve as members and shall designate one (1) as chairperson. The members shall not be employees of a public agency which is involved in the education or care of the child, or an employee of the Department of Education and shall not appear to have a vested interest in the outcome of the appeal. The ECAB shall have the same power and authority as a due process hearing officer.

(2) Any person who is a party to the hearing involving the identification, evaluation, or placement of children or youth with disabilities and who is aggrieved by the order of such hearing, may appeal such order in writing by certified mail to the Exceptional Children Appeals Board within thirty (30) calendar days of the entry of such order. This appeal shall also be submitted to the opposing party.

(a) Within twenty-one (21) calendar days of receipt of the written appeal, the opposing party may file a written response to the appeal, stating the exceptions to the appeal. The response shall be sent by certified mail to the Chairperson, Exceptional Children Appeals Board, Kentucky Department of Education.

(b) Upon receipt of the written appeal, the Division of Exceptional Children Services shall provide a copy of the entire hearing record to the Exceptional Children Appeals Board.

(c) After receipt of the entire hearing record, the Exceptional Children Appeals Board shall conduct an impartial review of the entire record and the written findings of fact and decision to ensure that procedures were consistent with requirements of due process. In any appeal filed, the provisions of Section 11(5)(a)8, (5)(b)2, and (8) of this administrative regulation shall apply.

(d) The Exceptional Children Appeals Board may seek additional evidence if necessary to ensure that the child shall be provided a free appropriate public education. If additional testimony is necessary, a review hearing shall be conducted at a time and place which is reasonably convenient for the parents, LEA and the Exceptional Children Appeals Board.

(e) For good cause, the Exceptional Children Appeals Board, through its chairperson, may grant specific extensions of time beyond the specified timelines at the request of either party.

(f) Upon conclusion of the hearing on appeals, the Exceptional Children Appeals Board shall make an independent decision including findings of fact and conclusions of law.

(g) The Exceptional Children Appeals Board shall ensure that no later than thirty (30) days after the receipt of a written request for a review of the hearing officer's findings of fact and decision in a due process hearing:

1. A final decision is reached in the review; and
2. A copy of the decision is mailed to each of the parties.

(h) The decision of the Exceptional Children Appeals Board shall be final, unless either party initiates a civil action in court.

(3) Copies of the Exceptional Children Appeals Board decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

Section 13. Child Status During Pendency of Administrative or Judicial Proceedings. The LEA ensures that during the pendency of any administrative proceedings or judicial proceedings, the child or youth shall remain in his present educational placement unless the LEA and the parent agree otherwise. If the administrative or judicial proceedings involve an application for initial admission to public school, the child or youth, with the consent of the parent, shall be placed in the LEA program until the completion of all the proceedings.

Section 14. Suspension or Expulsion. The LEA shall ensure that appropriate procedures are followed in the suspension and expulsion of children or youth with disabilities.

(1) Suspension of a child or youth with disabilities for more than ten (10) days during a school year shall constitute a change of educational placement. The ARC shall meet to:

(a) Review placement and make recommendations for continued placement or a change in placement; and

(b) Determine if regular suspension or expulsion procedures apply.

(2) If the suspension is for a minor infraction and no further disciplinary action is planned, then an ARC meeting shall not be required unless requested by the parent or principal or other service providers.

(3) If the LEA considers a suspension that will cumulatively exceed ten (10) days during a school year, parents shall be provided notice of a proposed action and notice of an ARC meeting consistent with Section 5 of this administrative regulation.

(4) When the ARC convenes to consider suspension or expulsion, the ARC shall determine:

(a) If the IEP and placement are appropriate and being fully and correctly implemented; and

(b) Whether the behavior or misconduct is a manifestation of the disability.

(5) If the ARC finds that the IEP or placement are not appropriate or not being fully and correctly implemented, appropriate modifications are determined at the ARC meeting and no further disciplinary action occurs.

(6) If the ARC finds that the IEP and placement are appropriate and being fully and correctly implemented, then it shall consider whether the behavior or misconduct was a manifestation of the disability.

(7) If the ARC determines that the behavior of a child or youth with disabilities is related to the disability, the child or youth shall not be subject to further suspension or expulsion.

(8) The LEA may seek injunctive relief through the courts if the parent and the other members of the ARC cannot agree upon a placement and the current placement will substantially likely result in injury to the child or youth or to others.

(9) If the ARC determines that the behavior is not related to the disability, the LEA may follow its regular suspension or expulsion procedures; however, educational services for the child or youth shall not be terminated during the period of the expulsion.

(10) If the parent disagrees with the proposed action of the ARC, the parent may request a due process hearing and the child shall remain in his current educational placement during any administrative or judicial proceedings unless the LEA and parent agree otherwise. A full and complete explanation of parental rights shall accompany the notice of the proposed action.

(11) The code of student conduct shall include the guidelines for suspension and expulsion of children and youth with disabilities.

Section 15. Placement of Students at Kentucky School for the Blind/Kentucky School for the Deaf (KSB/KSD).

(1) Local admissions and release committees may consider placement of students with visual disabilities at KSB and students with hearing disabilities at KSD, even though they do not meet the criteria for admission set by the Kentucky Department of Education.

(2) Local admissions and release committees shall not automatically place students at KSB and KSD who do not meet their admissions criteria. The admissions criteria shall not prevent placement if placement is provided for by an IEP as the result of appropriate due process procedures specified in the Individuals with Disabilities Education Act.

(3) If an admissions and release committee wants to consider placement at KSB/KSD of a student with disabilities who does not meet the admissions criteria, the superintendent from the local education agency shall send to the Director, Division of Exceptional

Children Services:

(a) A letter notifying the director of their interest in considering placement;

(b) All pertinent notices of proposed actions from meetings where this has been discussed;

(c) A copy of the written notice of eligibility determination; and

(d) All appropriate assessment information.

(4) An admissions and release committee shall be scheduled which affords the division director or his designee the opportunity to participate. In the event of a disagreement, the state education agency, local education agency, or parent may appeal by requesting a due process hearing. The final decision shall [~~must~~] be made according to the due process procedures outlined in this administrative regulation. The KSB/KSD admissions criteria may be considered but are not binding upon the decision-makers.

Section 16. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 13, 1993

FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth Warlick

(1) Type and number of entities affected: 176 local school districts, two state schools (Kentucky School for the Blind and Kentucky School for the Deaf) and approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Individuals with Disabilities Education Act mandates that parents be informed of free and low cost legal services.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300, 506(c).

2. State compliance standards. This administrative regulation addresses the federal mandate that public education agencies inform parents of students with disabilities of free or low cost legal services available in the area if the parent requests the information.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations require that public education agencies inform parents of students with disabilities of free or low cost legal services available in the area if the parent requests the information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

707 KAR 1:190. Evaluation.

RELATES TO: KRS 157.200, 157.360, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1400-1427

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, and 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to evaluation of children and youth with disabilities to determine eligibility for specially designed instruction and related services and is necessary to assure uniformity in providing specially designed instruction and related services and to conform with 20 USC 1401 through 1420.

Section 1. Definitions. (1) "Current" means less than one (1)

calendar year old.

(2) "Full and individual evaluation" means the collection, analysis, interpretation, and documentation of a variety of evaluation data sources related to the suspected disability, administered selectively with the individual child or youth.

(3) "Native language" means the language normally used by an individual.

(4) "Qualified personnel" means that an individual has met state approved or recognized certification, licensing, registration, or other comparable requirements such as training that apply to the area in which specially designed instruction or related services are provided.

(5) "Referral" means written information about a child or youth, suspected of having a disability, that includes:

(a) Personally identifiable data;

(b) A description of current status including all areas of concern; and

(c) Appropriate instruction, support services and intervention provided for any area of concern that adversely affects educational performance.

(6) "Written behavioral observations" mean written documentation of a current pattern of behavior over time, and across settings, including targeted behaviors, as identified by the admissions and release committee (ARC) as described in 707 KAR 1:180 in the referral, conducted in the environment in which the targeted behaviors occur, and by personnel, other than a child's teacher, specifically trained in observation techniques and methods.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for referral and evaluation. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Referral. (1) If a child or youth is identified as having a suspected disability, the referral source, including but not limited to teachers, parents, and professionals shall submit a written referral to a designated LEA representative. If a parent or individual not employed by the LEA refers a child or youth, the LEA shall, through providing assistance, make sure the written referral document is completed and submitted to the ARC Chairperson within five (5) school days.

(2) After receipt [~~and review~~] of the referral document, the Admissions and Release Committee (ARC) shall convene, review and analyze the referral, and determine if sufficient information is available for initiating a full and individual evaluation. The ARC shall propose or refuse action to evaluate and provide notice consistent with 707 KAR 1:180.

(a) Each written referral shall include:

1. Personally identifiable data including name, parent, address, and date of birth;

2. Current status, including all areas of concern with regard to the child or youth in relation to his similar age peers;

3. Current screening data collected according to the LEA's board policies and procedures as required under KRS 158.6451, 703 KAR 4:020, and 704 KAR 4:020 [~~3:006~~];

4. A summary of appropriate instruction, support services and interventions that have been provided and proven ineffective for any area of concern that adversely affects educational performance.

(b) [~~If referral information is incomplete, additional information shall be collected.~~

~~(c)~~] If referral information is complete, the ARC shall determine the need to initiate a full and individual evaluation.

(c) [~~(d)~~] If the referral information is insufficient to ascertain or does not support a suspected disability and the need for a full and individual evaluation, the ARC shall document the basis for the decision.

Section 4. Evaluation. (1) The ARC shall ensure that:

(a) The child or youth is assessed in all areas of concern related to a suspected disability at no cost to parents;

(b) All validity issues identified by failed screenings are addressed prior to evaluation;

(c) Evaluations are selected and administered so as not to be racially or culturally discriminatory;

(d) Specially designed instruction and related services shall not be provided to any child or youth before a full and individual evaluation is completed and eligibility determined;

(e) The full and individual evaluation is conducted by a multidisciplinary team;

(f) The multidisciplinary team includes at least one (1) teacher with teacher certification in the area of the suspected disability or disabilities or qualified personnel with knowledge in the area of the suspected disability or disabilities;

(g) Full and individual evaluations are conducted by qualified personnel who shall properly administer the evaluation and interpret the results;

(h) Tests and procedures are:

1. Validated for the specified purpose for which they are used;

2. Tailored to assess specific areas of educational need;

3. Designed to provide more than a single general intelligence quotient;

4. Administered in conformance with the instructions provided by the publisher; and

5. Administered in the native language or other mode of communication of the child or youth unless not clearly feasible to do so.

(i) The sole criterion for determining an appropriate educational program is not based on a single procedure;

(j) Each ARC member has access to the evaluation information to be used for making educational decisions prior to any ARC meeting;

(k) If computer-assisted reports are used, the program allows input of individually relevant data beyond personally identifiable data;

(l) Parents of a child or youth have the right to obtain an independent educational evaluation;

(m) Results from group administered tests or procedures are not used to determine eligibility;

(n) Any current evaluation information may be a legitimate substitute for another evaluation of the same type if the information obtained meets the criteria for a full and individual evaluation;

(o) Information about environmental, family, and cultural factors is utilized in the decisionmaking process;

(p) Evaluation documentation includes a comparison and interpretation of the results of all assessments to be written in language understandable to the ARC members; and

(q) When a test is administered to a child or youth with impaired sensory, manual, or speaking skills, the test results accurately reflect the aptitude or achievement level of the child or youth or whatever other factors the test purports to measure, rather than reflecting impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

(2) Using the referral information, the ARC shall examine the child's current status in the following areas to determine additional information needed for a full and individual evaluation in all areas related to the suspected disability including:

(a) Physical functioning which includes vision, hearing, health, motor abilities and speech mechanism;

(b) Communication functioning which includes speech sound production and use, receptive and expressive language, fluency, voice, and, as appropriate, augmentative or alternative communication;

(c) Cognitive functioning which includes an appraisal of aptitude and the mental processes by which an individual applies knowledge, thinks and solves problems;

(d) Social competence which includes adaptive behaviors and social skills which enable a child or youth to meet environmental

demands and to assume responsibility for his own and other's welfare;

(e) Academic performance over time which includes an educational history of the level of development, mastery or achievement and application of skills and knowledge within the following academic areas as selected by the ARC:

1. Basic and content reading;
2. Reading comprehension;
3. Mathematics calculation, reasoning and application;
4. Written expression;
5. Oral expression;
6. Listening comprehension;
7. Learning preference issues such as learning style, strategies;
8. Effect of the disability on acquisition, development, mastery and application of academic skills;

(f) Vocational functioning which consists of a combination of formal and informal assessment activities and includes consideration of, as appropriate:

1. General work behaviors;
2. Following directions;
3. Working independently or with job supports;
4. Job preferences or interests;
5. Dexterity;
6. Abilities;
7. Interpersonal relationships and socialization; and
8. Related work skills;

(g) Recreation and leisure functioning includes use of free time, maintenance of physical fitness, use of generic community recreation facilities and resources and degree of social involvement, as appropriate; and

(h) Environmental, family and cultural factors which include:

1. Relationship with family;
2. Relationship with peers;
3. Family's dominant language;
4. Cultural influences;
5. Expectations of the parents for the child or youth in the home, school, and community environments;
6. Services received in the community; and
7. Economic influences.

(3) The LEA shall conduct a full and individual evaluation or reevaluation using systematic data collection procedures including:

(a) Norm-referenced and performance based testing;
(b) Behavior observations;
(c) Interviews; and
(d) Rating scales.

Section 5. Reevaluation. (1) The LEA shall conduct a reevaluation of a child or youth with a disability on or before the third anniversary of the meeting when the ARC determined eligibility, or more frequently if conditions warrant, or at the request of the parent or teacher.

(2) The reevaluation shall be conducted consistent with Section 4 of this administrative regulation and for all areas related to the disability, as determined by the ARC.

(3) The reevaluation shall include:

(a) A review and update of the current status of the child or youth;

(b) A review of progress data related to individual education program (IEP) as defined in 707 KAR 1:210; and

(c) Other assessments as needed.

(4) Readministration of an individual intelligence test may not be required if previous results have been consistent over time (two (2) previous measures within a standard error of measurement of each other). If an individual intelligence test is not administered, then:

(a) Documentation of the reason the test was not given shall be provided by the ARC;

(b) The ARC shall determine if the information presented on the cognitive ability of the child or youth is sufficient for determining a disability; and

(c) Alternate measures of cognitive functioning shall be utilized to insure that the child or youth receives a full and individual evaluation in all areas related to the suspected disability.

Section 6. Use of Evaluation Information. (1) The ARC shall use the full and individual evaluation results to:

(a) Determine if the child or youth has a disability; and

(b) Determine if the disability adversely affects the educational performance of the child or youth to the extent the child or youth needs specially designed instruction and related services in order to attain the capacities and goals required by KRS 158.645 and 158.6451.

(2) If the ARC determines that the child or youth is eligible for specially designed instruction and related services, it shall use the information from the referral and evaluation or reevaluation to develop the IEP and plan for transition.

(3) The ARC shall use results from reevaluation to determine:

(a) If the child or youth still has a disability; and

(b) If the disability continues to adversely affect the educational performance of the child or youth to the extent that the child or youth needs specially designed instruction and related services.

(4) If the ARC determines that the child or youth continues to be eligible for specially designed instruction and related services it shall use the information from the re-evaluation to revise the IEP and plan for transition.

Section 7. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 13, 1993

FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth Warlick

(1) Type and number of entities affected: 176 local school districts, two state schools (Kentucky School for the Blind and Kentucky School for the Deaf) and approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1411(d); 1412(2)(c); 1414(a)(1)(A); 34 CFR Part 300

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that all children residing in the state who are disabled, regardless of the severity of their disabilities, and who are in need of specially designed instruction and related services are evaluated and that documentation is maintained that enables the State and U.S. Secretary of Education to audit the accuracy of the child count.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for evaluation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, eligible students, or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, eligible students, or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

707 KAR 1:200. Eligibility of children and youth with disabilities.

RELATES TO: KRS 157.200, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to eligibility and is necessary to assure uniformity in eligibility for specially designed instruction and related services and to conform with 20 USC 1401 and 1420.

Section 1. Definitions. (1) "Academic processing deficits" means dysfunctions in the normal sequence of acquiring, developing, understanding, organizing, manipulating, retrieving or responding to information across a variety of settings in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculations, and mathematics reasoning.

(2) "Adversely affects" means that the progress of the child or youth is impeded by a disability to the extent that educational performance is significantly and consistently below the level of similar age peers to such a degree that specially designed instruction and related services are needed by the child or youth.

(3) "Basic reading skills" means using the process of perception and word recognition including decoding and matching to facilitate acquiring meaning from connected prose.

(4) "Educational performance" means acquiring, developing, understanding, or applying knowledge or skills needed for academic performance or social competence.

(5) "Fluency disorder" means an interruption in the flow of speaking, characterized by atypical rate, rhythm, and repetition in sounds, syllables, words, and phrases which may be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

(6) "Language disorder" means impaired comprehension or production of spoken, written or other symbol systems which may involve:

(a) The form of language (phonology, morphology, syntax);

(b) The content of language (semantics); or

(c) The use of language in communication (pragmatics) in any combination.

(7) "Listening comprehension" means the process of translating spoken words into meaning using the components of receptive vocabulary; morphological, syntactic, pragmatic, and metacognitive processing; and working memory.

(8) "Mathematics calculation" means completing the arithmetic and algebraic procedures accurately and automatically including the operations of addition, subtraction, multiplication, and division.

(9) "Mathematics reasoning" means using the processes of problem translation, problem integration, solution planning, solution execution, and solution monitoring to solve math problems.

(10) "Oral expression" means the ability to communicate using spoken language, morphological processes, syntax, vocabulary, pragmatics, and noncommunicative language functions.

(11) "Reading comprehension" means using the processes of

literal comprehension including meaning access and parsing; inferential comprehension including integration, summarization and elaboration; and comprehension monitoring including goal setting, strategy selection, goal checking, and self-correcting processes to facilitate acquiring meaning from connected prose.

(12) "Speech sound production and use disorder" means the atypical production of speech sounds in connected speech including phonetic (articulation) errors or phonemic (phonological) errors which may interfere with intelligibility.

(13) "Voice disorder" means abnormal use or absence of vocal quality, pitch, loudness, resonance, or duration, which is inappropriate for an individual of similar age and gender.

(14) "Written expression" means the communication of ideas using printed symbols to convey meaning to various audiences for a variety of purposes using the processes of planning through goal setting, idea generation, and idea organization, translation (graphic, syntactic, semantic, textual, and contextual) and reviewing.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for determining eligibility of any child or youth with disabilities residing within the jurisdiction of the LEA to receive specially designed instruction and related services. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Eligibility Determination. (1) After a full and individual evaluation is completed, the admissions and release committee (ARC), as described in 707 KAR 1:180, shall compare and analyze all evaluation information and document interpretation of the results to verify that:

(a) The child or youth has a disability; and

(b) The disability adversely affects educational performance.

(2) Evaluation information shall be sufficient if:

(a) A complete referral verifies a concern persists after appropriate support and interventions have been provided;

(b) Multiple nondiscriminatory methods or measures were used to evaluate the areas specified by the ARC, including valid and reliable norm-referenced and performance based testing, behavior observations, interviews, and rating scales;

(c) Data on family, environmental, and cultural factors is available for analysis to determine the impact on educational performance; and

(d) Referral data and additional information collected documents the current status of the child or youth in relation to the following areas:

1. Physical functioning;
2. Communication functioning;
3. Cognitive functioning;
4. Social competence;
5. Academic performance;
6. Vocational functioning; and
7. Recreation and leisure functioning.

(3) If the ARC determines that the evaluation information available is not sufficient to verify that the child or youth is disabled and needs specially designed instruction and related services, the ARC shall obtain additional evaluation information.

(4) If the child or youth meets the eligibility criteria in disability area as specified in this administrative regulation, the ARC shall develop an individual education program (IEP), as defined in 707 KAR 1:210. The ARC shall use results of all evaluations to determine the extent and nature of specially designed instruction and related services to be provided.

(5) The ARC shall specify the primary disability as provided in this administrative regulation.

Section 4. Autism. (1) The ARC shall determine that a child or youth has the disability of autism as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) Deficits in developing and using verbal or nonverbal communication systems for receptive or expressive language;

(b) Deficits in social interaction (participation) including social cues, emotion expression, personal relationships, and reciprocal (contributing) interaction;

(c) Repetitive ritualistic behavioral patterns including insistence on following routines and a persistent preoccupation and attachment to objects; and

(d) Abnormal responses to environmental stimuli.

(2) The ARC shall document that the deficits are not primarily the result of one (1) of the following: impaired hearing, physical disability, emotional-behavioral disability, specific learning disability, mental disability, visual disability, deafness and blindness, or traumatic brain injury.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 5. Communication Disorder. (1) An ARC shall determine that a child or youth has a communication disorder as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies that:

(a) The child or youth has a speech or language disability in one (1) or more of the following areas:

1. Speech sound production and use;
2. Language [~~comprehension~~];
3. Fluency; or
4. Voice.

(b) The child or youth does not have a communication difference caused by use of a dialect, English as a second language (ESL), or an ability to speak or understand two (2) or more languages in the absence of a disorder in communication.

[~~(c) A speech sound production and use disorder exists when the following criteria are met:~~

~~1. Attained scores on a standardized instrument are at least one and one-third (1 1/3) standard deviations below the mean or at the ninth percentile;~~

~~2. When compared to same-age peers who are not disabled, productions reflect common sound or phonological processes errors and connected speech is occasionally unintelligible or noticeably in error; and~~

~~3. Speech mechanism structure and functions is minimally inadequate.~~

~~(d) A language comprehension or use disorder exists when the following criteria are met:~~

~~1. Attained scores on a standardized instrument are at least one and one-third (1 1/3) standard deviations below the mean or at the ninth percentile; and~~

~~2. When compared to same-age peers who are not disabled, language skills differ in form (phonology, morphology, syntax), content (semantics) or use (pragmatics).~~

~~(e) A fluency disorder exists when the following criteria are met:~~

~~1. A minimum of ten (10) disfluencies per 100 words;~~

~~2. Type of disfluency includes whole monosyllable word repetitions, broken words, part word repetitions, or silent or audible prolongations; and~~

~~3. Three (3) per part word repetitions, phonatory arrest or sustained articulatory posture of at least one half (.5) seconds in duration, sound prolongations of at least one and one half (1.5) seconds in duration, struggle behavior, or accessory features.~~

~~(f) A voice order exists when the following criteria are met:~~

~~1. Pitch is noticeably, intermittently, and abnormally high or low;~~

~~2. The degree of loudness is noticeably, intermittently, and abnormally different from similar age peers who are not disabled;~~

~~3. Quality is noticeably, intermittently and abnormally breathy, harsh, or hoarse;~~

~~4. Nasal resonance is noticeably, intermittently, and abnormally hypernasal or hyponasal; or~~

~~5. Pitch, loudness, quality or nasal resonance problems resulting from minor laryngeal pathology reported by a licensed physician, including vocal fold thickening, edema, or nonfiberous nodule; and~~

~~6. Problems persist over time and are not solely the result of temporary physical factors such as allergies, cold, abnormal tonsils or adenoids, transient vocal abuse or misuse.~~]

(2) Decisions regarding a child or youth's eligibility in the areas of speech sound production and use, language, fluency, and voice shall be made pursuant to the "Speech/Language Eligibility Rating Scales, September, 1993".

(3) The ARC shall document its interpretation of education information that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

(4) The "Speech/Language Eligibility Rating Scales, September 1993" are hereby adopted and incorporated by reference. Copies of the document may be inspected and copied at the Division of Exceptional Children Services, Department of Education, 8th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 6. Deaf-blind. (1) An ARC shall determine that a child or youth has the disability of deaf-blind as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) A hearing loss as follows:

1. A conductive, sensori-neural or mixed hearing loss of fifty (50) dB through the speech frequencies of 500, 1000, and 2000 Hz in the better ear, even with a hearing aid;

2. Cortical deafness;

3. A medically diagnosed condition of progressive hearing loss; or

4. A functional hearing loss; and

(b) A visual impairment as follows:

1. Visual acuity even with prescribed lenses is 20/70 or worse in the better eye; or

2. Visual acuity is better than 20/70 and the child or youth has any of the following conditions:

a. A medically diagnosed progressive loss of vision;

b. Visual field of twenty (20) degrees or worse;

c. A medically diagnosed condition of cortical blindness; or

d. A loss of functional vision; and

(c) Such severe communication, developmental, and learning needs that the child or youth cannot benefit from programs designed solely for children and youth with visual impairments or hearing impairments.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 7. Emotional-behavioral Disability. (1) An ARC shall determine that a child or youth has an emotional-behavioral disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if a compilation of previous and current behavioral, academic, and intervention data collected across multiple settings verifies that:

(a) When compared to peer and cultural norms, the child or youth continues to exhibit severe deficits in social competence or academic performance:

1. To a marked degree;

2. Across settings;

3. Over a long period of time; and

4. After appropriate academic and behavioral interventions have proven ineffective.

(b) If any deficit in social competence is identified, then the deficit is to the extent that it impairs personal relationships with peers or adults and clearly indicates the behavior deviates from the standards for the appropriate peer and cultural reference groups.

(c) If any deficit in academic performance is identified, then the deficit is to the extent that it impairs development, mastery, and application of skills and knowledge and is related to social-emotional problems of the child or youth.

(d) The severe deficit in social competence or academic performance is not solely the result of:

1. Vision, hearing, physical, cognitive, or speech and language disabilities; or

2. Cultural, ethnic, medical, developmental, social, or home factors.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child or youth is eligible for specially designed instruction and related services.

Section 8. Hearing Impairment. (1) An ARC shall determine that the child or youth has a hearing impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies that:

(a) A hearing loss of twenty-five (25) dB or greater exists through the speech frequencies of 500, 1000, and 2000 Hz in the better ear; and

(b) Deficits exist in processing linguistic information through hearing.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 9. Mental Disability. (1) An ARC shall determine that the child or youth has a mental disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) Mild mental disability in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is manifested during the developmental period.

(b) Functional mental disability in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is manifested during the developmental period.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 10. Multiple Disability. (1) An ARC shall determine that the child or youth has a multiple disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) A combination of two (2) or more of the following disabilities according to the criteria in this administrative regulation: hearing

impairment, physical or orthopedic disability, other health impaired, emotional-behavioral disability, mental disability, specific learning disabilities, traumatic brain injury, visual impairment, or autism;

(b) The disability is not a combination of deafness and blindness or communication disorder and another disability.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 11. Other Health Impaired. (1) An ARC shall determine that a child or youth has the disability of other health impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if each of the following are met:

(a) A current educationally relevant medical evaluation completed by a licensed physician verifies:

1. The existence of a severe health impairment caused by chronic or acute health problems such as heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, attention deficit disorder, attention deficit hyperactive disorder, or acquired immune deficiency syndrome;

2. The diagnosis and nature of the health impairment; and

3. The effect of the impairment on the vitality, strength, or alertness of the child.

(b) Current educationally relevant evaluation information collected across multiple settings verifies the impact of the impairment on instructional tolerance, stamina, fine and gross motor, locomotion, physical education, and academic performance.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 12. Orthopedic Impairment or Physically Disabled. (1) An ARC shall determine that a child or youth has an orthopedic impairment or a physical disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if each of the following are met:

(a) A current educationally relevant medical evaluation completed by a licensed physician verifies:

1. The existence of a severe orthopedic or physical impairment caused by congenital anomaly, disease, injury, or accident;

2. The diagnosis and nature of the impairment; and

3. Any limitations resulting from the impairment.

(b) Current educationally relevant evaluation information collected across multiple settings verifies the impact of the impairment on fine and gross motor, locomotion, physical education, and academic performance.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 13. Specific Learning Disabilities. (1) An ARC shall determine that a child or youth has a specific learning disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) That when provided with appropriate learning experiences, the child or youth does not achieve commensurate with his age and ability levels in one (1) or more of the seven (7) areas listed in paragraph (b) of this subsection. The area(s) of concern identified on the referral or through the comprehensive evaluation process continues following multiple appropriate support and interventions implemented over time and demonstrates little or no progress as defined by local school district procedures.

(b) A severe aptitude-achievement discrepancy exists between academic performance and cognitive aptitude as determined by using the regression estimated true score method or the nonstandard score method.

1. A severe aptitude achievement discrepancy is evidenced when the achievement score of the child or youth is less than or equal to the four (4) percent criterion score as determined using one (1) of the above methods and is evidenced in one (1) of the following seven areas as defined in Section 1 of this administrative regulation:

a. Oral expression;

b. Listening comprehension;

c. Written expression;

d. Basic reading skills;

e. Reading comprehension;

f. Mathematics calculation; and

g. Mathematics reasoning.

2. The regression estimated true score method with a z-score set at four (4) percent shall be used when:

a. Normative ability and achievement measures yielding valid standard scores are used; and

b. Correlations between the aptitude and achievement tests are known for the age of the child or youth.

3. The nonstandard score method shall be used when standardized, normative measures of ability and achievement appropriate to the regression estimated true score method are invalid or not available.

4. If the nonstandard score method is used, then the ARC shall:

a. Provide a written rationale why the formal evaluation procedures used with most children and youth are invalid including which scores from the aptitude and the achievement measures are invalid;

b. Specify the formal and informal assessment procedures used to evidence the ability and achievement scores;

c. Provide scores and their interpretation from the alternative procedures;

d. Describe the ability and achievement indices for the child or youth and the methods used to evaluate a specific discrepancy;

e. Describe how other children or youth of the same age and ability are expected to perform; and

f. Describe whether the discrepancy between aptitude and achievement is severe and occurs in four (4) percent or less of the population.

(c) An academic processing deficit exists when informal instructional assessments including behavior observations in the area(s) where an aptitude-achievement discrepancy is evidenced indicate a reliable and stable pattern of the performance of the child or youth and demonstrate a processing deficit in one (1) of the seven (7) areas listed in paragraph (b)1 of this subsection and Section 1 of this administrative regulation.

(d) The specific learning disability is not primarily the result of a visual, hearing, or motor disability; mental disability; emotional-behavioral disability; or environmental, cultural or economic differences. If evaluation data collected supports the presence of one (1) or more of these exclusion conditions, the ARC documents:

1. The chronicity, severity, and frequency of the exclusionary condition; and

2. The method used for determining if the exclusionary condition is or is not the primary reason for the aptitude-achievement discrepancy.

(e) A social competence deficient may exist when attained scores, including evaluations of those adaptive behaviors critical to independent functioning and social responsibility meet the following criteria:

1. The composite score is greater than, or equal to, a subaverage standard score (greater than or equal to seventy-five (75)) or in the fourth percentile; and

2. A domain or subtest standard score is eighty-five (85) or less than, or equal to, the 15th percentile.

(2) When social competence evaluation data indicates the impact of a specific learning disability on one (1) or more nonacademic areas

of social competence, the ARC shall include appropriate educational planning for those areas of social competence.

(3) The ARC shall prepare a written report of the results of the evaluation which includes:

(a) If the individual has a specific learning disability and the adverse effect on educational performance including:

1. A statement describing in which of the seven (7) areas in subsection (1)(b)1 of this section the child or youth has a specific learning disability including the identified academic processing deficit.

2. A statement verifying that the child or youth meets all of the eligibility requirements.

(b) The basis for making the determination including the assessment procedures, results and criteria used to determine:

1. An academic processing deficit;

2. Social competence including adaptive behavior;

3. Appropriate learning experiences;

4. The impact of the learning problems resulting from other disabilities or from environmental, cultural or economic differences, any indicators identified, and a description of how the ARC determined the significance of the impact; and

5. Aptitude-achievement discrepancy;

(c) The relevant behavior noted during behavior observations;

(d) The relationship of that behavior to the academic performance of the child or youth;

(e) The educationally relevant medical findings, if any;

(f) Whether a severe discrepancy between the academic performance and cognitive aptitude exists that is not correctable without specially designed instruction and related services;

(g) The determination of the ARC concerning environmental, cultural or economic differences, how these factors have influenced learning and the criteria used to determine the impact.

(4) Each member of the ARC shall certify in writing if the report reflects his conclusion. If it does not reflect his conclusion, the member shall submit a separate statement presenting and supporting his conclusions.

(5) Following a reevaluation, the severe discrepancy between academic performance and cognitive aptitude in one (1) or more of the seven (7) areas in subsection (1)(b)1 of this section shall not be a requirement for continuing eligibility.

(6) The ARC shall document any alternative explanations for the learning problem(s) of this child or youth and its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 14. Traumatic Brain Injury. (1) The ARC shall determine that a child or youth has a disability of a traumatic brain injury as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple setting verifies severe deficits in at least one (1) or more of the following areas:

(a) Receptive and expressive oral and written language including pragmatics;

(b) Memory including deficits in acquisition and retention of new learning or retrieval of previously learning information;

(c) Perceptual skills;

(d) Attention, alertness, and concentration;

(e) Ability to respond to stimuli ranging from noninitiation of activity to perseverance to impulsivity;

(f) Ability to monitor one's own behavior;

(g) Social competence including social-emotional status; or

(h) Cognitive functioning.

(2) A current educationally relevant medical statement completed by a licensed physician verifies the existence of a traumatic brain injury and specifying the diagnosis and extent of injury.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 15. Visual Impairment. (1) An ARC shall determine that the child or youth has the disability of visual impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) The visual acuity even with prescribed lenses is 20/70 or worse in the better eye; or

(b) The visual acuity is better than 20/70, and the child has any of the following conditions:

1. A medically diagnosed progressive loss of vision;

2. A visual field of twenty (20) degrees or worse;

3. A medically diagnosed condition of cortical blindness; or

4. A loss of functional vision.

(c) The child or youth requires specialized materials, instruction in orientation and mobility, braille, visual efficiency, or tactile exploration.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 16. Developmental Delay. An ARC shall determine that a child has the disability of developmental delay if the child meets the definition set forth in KRS 157.200, and the criteria set forth in 707 KAR 1:150.

Section 17. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 13, 1993

FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1994, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Kevin M. Noland, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth Warlick

(1) Type and number of entities affected: 176 local school districts, two state schools (Kentucky School for the Blind and Kentucky School for the Deaf) and approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effect upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effect upon competition): None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: No
TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1411(d); 1412(2)(c); 1414(a)(1)(A); 34 CFR Part 300.
2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that a child or youth be determined to be eligible meets eligibility requirements to be counted for funding under Part B of the Individuals with Disabilities Education Act, i.e., have a disability and need specially designed instruction and related services.
3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for determining if a child or youth has a disability and needs specially designed instruction and related services and that documentation is maintained that enables the State and U.S. Secretary of Education to audit the accuracy of the child count.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate only provides definitions for the various categories of handicapping conditions. States must provide specific eligibility requirements in order to assure that students are not misclassified.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate only provides definitions for the various categories of handicapping conditions. States must provide specific eligibility requirements in order to assure that students are not misclassified.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. This product was approved by the Plumbing Code Committee at their November 8 [~~August 2~~], 1993 meeting.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."
(2) "ABS" means acrylonitrile-butadiene-styrene pipe.
(3) "ASTM" means American Society for Testing Materials.
(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(5) "Committee" means the State Plumbing Code Committee.
(6) "Code" as defined by KRS 318.010(11).
(7) "Department" as defined by KRS 318.010(1).
(8) "Person" as defined by KRS 318.010(9).
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.
(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:
(a) A description of the part or material for which approval is sought;
(b) Available technical data;
(c) A listing of other authorities which have approved the use of the part or material; and
(d) Any other pertinent information requested by the committee.
(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.
(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.
(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA; W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through eighteen (18) inches for underground storm water drainage within a building.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: December 13, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1994 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 1994, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

CABINET FOR HUMAN RESOURCES
Department of Health Services
Division of Environmental Health and Community Safety
(Proposed Amendment)

900 KAR 1:015. Laetrile manufacturing standards.

RELATES TO: KRS 217.950, 217.952, 311.950 to 311.966, 311.991

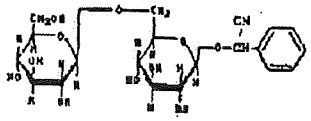
STATUTORY AUTHORITY: KRS 194.050, 217.950

NECESSITY AND FUNCTION: KRS 217.950 provides that Amygdalin (laetrile) may be manufactured in this state subject to licensing [~~and regulation~~] by the Cabinet for Human Resources and directs the Secretary for Human Resources to adopt administrative regulations which prescribe minimum standards for manufacturers in preparing, compounding, processing, and packaging the substance. The secretary is also directed to establish standards of purity and make periodic tests and inspections of both the facilities for manufacture and samples to ascertain the purity, quality, and identity [~~of the substance~~].

Section 1. Intent. In adopting an administrative regulation relating to the manufacture of Amygdalin (laetrile), [~~pursuant to the mandate of the General Assembly of Kentucky~~] the Cabinet for Human Resources takes official notice that this [~~such~~] substance has not been approved by the Federal Food & Drug Administration and that the interstate shipment of the [~~such~~] substance shall [~~has been held to~~] be illegal. This administrative regulation is adopted in recognition of existing federal restrictions.

Section 2. Definitions. [~~As used in this regulation:~~]

(1) "Amygdalin" (laetrile) means Amygdalin (D-mandelonitrile-beta-D-glucoside-6-beta-D-Glucoside), including all dosage forms [~~thereof~~].



It includes:

(a) D-Amygdalin; and

(b) D, L-Amygdalin.

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Current Good Manufacturing Practices" means [~~the applicable provisions of~~] 21 CFR 210.1 to 210.3 [~~Part 210~~] Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding of Drugs and 21 CFR 211.1 to 211.8 [~~Part 211~~] - Current Good Manufacturing Practice for Finished Pharmaceuticals adopted by the U.S. Food and Drug Administration.

Section 3. Licensing Requirements. (1) A [~~No~~] person, partnership, association, corporation, or other business organization shall not [~~may~~] manufacture, prepare, or compound amygdalin in this state without [~~first obtaining~~] a license from the cabinet [~~department~~].

(2) [~~An~~] Application for a license shall be made on Form DCB-1, "Application for License to Manufacture Amygdalin", provided [~~forms prescribed or approved~~] by the cabinet, [~~department~~] and shall include [~~among other things~~] the training and experience of personnel and a description of the facilities, equipment, and materials to be used in the manufacture of amygdalin. Form DCB-1, "Application for License to Manufacture Amygdalin", revised October 1993, is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(3) A [~~No~~] license shall not be issued to manufacture amygdalin unless the applicant:

(a) Is of good moral character, or if the applicant is an association or corporation, [~~that~~] its officers are of good moral character;

(b) Is in compliance with "Current Good Manufacturing Practices;"

(c) Has qualified personnel to perform assigned tasks;

(d) Submits the formula, including all components [~~thereof~~], involved in the manufacture of the product;

(e) Has submitted a label [~~for approval~~] which discloses all information required for a prescription drug, [~~under federal law~~] including a disclosure of possible side effects;

(f) Is financially responsible; and

(g) Is in compliance with all [~~other~~] provisions of this administrative regulation.

Section 4. License Expiration; Renewal. (1) Every license issued by the cabinet [~~department~~] to manufacture amygdalin shall expire on June 30 of each year following the date of issuance unless [~~sooner~~] suspended or revoked.

(2) A [~~No~~] license shall not be renewed by the cabinet [~~department~~] to manufacture amygdalin unless the applicant is in [~~full~~] compliance with the provisions of this administrative regulation.

Section 5. Manufacturing Practices. The Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding of Drugs [~~as set forth~~] in 21 CFR 210.1 to 210.3 [~~Part 210~~] and the Current Good Manufacturing Practice for Finished Pharmaceuticals [~~as set forth~~] in 21 CFR 211.1 to 211.208 [~~Part 211~~] adopted by the U.S. Food and Drug Administration, incorporated by reference, shall apply. [~~are hereby adopted by the department as applicable to the manufacture of amygdalin in this state. 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 21 CFR 210.1 to 210.3 and 21 CFR 211.1 to 211.208 [~~this publication~~] shall be on file in the Office of the Commissioner for Health Services, [~~Inspector General, Cabinet for Human Resources,~~] 275 East Main Street, Frankfort, Kentucky

40621, and [~~is~~] available for public inspection and copying, Monday through Friday, 8 a.m. until 4:30 p.m. A copy may also be obtained [~~of this publication is also available~~] from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 6. Standards of Identity, Purity, and Tests for D-Amygdalin.

(1) Powder form:

(a) Molecular formula: $C_{20}H_{27}NO_{11}$;

(b) Molecular weight: 457.4;

(c) Description: White powder - melting range: varies with water of crystallization and previous melting;

(d) Solubility: (mg/ml) water 125, ethanol 0.33, ten (10) percent [~~10%~~] ethanol 20, ether insoluble, methylene chloride insoluble;

(e) Stability:

1. Solution: (10 mg/ml) Determined by gas chromatography of TMS derivative:

pH 6 phosphate buffer	Stable at least twenty-four (24) hours
pH 8 phosphate buffer	No more than fifteen (15) percent [~~15%~~] L-Amygdalin formed in twenty-four (24) hours
0.1 N HCl	No more than sixty-five (65) percent [~~65%~~] decomposition in ten (10) minutes
0.1 N NaOH	No more than fifty-six (56) percent [~~56%~~] decomposition in ten (10) minutes

2. Bulk: A sample stored at sixty (60) degrees Celsius [~~60°C~~] for thirty (30) days showed no degradation as indicated by gas chromatography;

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not contain [~~may contain no~~] more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H_2O) a solution has the following absorption peaks (alpha max) and extinction coefficients (E):

Alpha max	E
268 nm	214
262 nm	312
257 nm	287
252 nm	203
208 nm	7400

(j) Nuclear magnetic resonance: (D_2O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	1	H - C - C = N
7.6	s	5	Phenyl protons

(k) Optical rotation:

$$[\alpha]^{20}_{D} = -42° \ (1, H_2O)$$

Merck Index, 8th Ed. (1968);

(l) Gas chromatography:

1. Column: three (3) percent [~~3%~~] OV-1 on 100/200 Chromosorb W, AW-DMCS in glass column;

2. Oven temperature: 250 degrees [~~°~~] to 275 degrees Celsius [~~°C~~] programmed at one (1) degree per [~~1°/~~] minute;

3. Carrier gas: N_2, thirty-five (35) ml. per [~~/~~] minute;

4. Sample: TMS-derivative of the sample (Prepare by dissolving one (1) mg. of the sample in five-tenths (0.5) ml. tri-sil with gentle heat.);

5. Detection: Flame ionization at 300 degrees Celsius [~~°C~~];

(m) Thin layer chromatography:

1. Adsorbent: SiO_2·HF;

2. Solvent system: n-BuOH/HOAc/H_2O (6:3:1);

3. Sample applied: 100γ, 200γ, (H_2O);

4. Detection: UV, I_2, KBR [~~KPR~~] Spray;

(n) Purity: The compound shall not contain [~~should contain no~~] more than one (1) percent [~~%~~] total impurities other than water;

(o) Suggested identity tests: IR, UV & NMR Spectra; and

(p) Suggested assay procedures: Thin layer and gas chromatography.

(2) Tablet form:

TEST	SPECIFICATION
Assay:	Ninety (90)-110 percent [~~%~~] of label
HPLC Method Column-Lichrosorb RP8, 300 mm. x 4 mm. Mobile phase 25% CH_3OH in H_2O Flow rate - 2 ml./min. Detector/sensitivity-uv at 254 nm/0.02 aufs	The total of all uv absorbing impurities shall not exceed five (5) of this chromatogram
Disintegration: Current USP method	100% within fifteen (15) minutes
Dissolution: Current USP method	100% within thirty (30) minutes
Weight variation	Conforms to current USP
Thin layer chromatography (Methanol extraction)	Compares favorably to reference material

Adsorbent: Silica gel GF

Solvent system: n-BuOH/HOAc/H_2O, 4/1/1

Sample applied: 200, 100γ (MeOH)

References: D,L-Amygdalin, 100γ (H_2O)
D,L-Amygdalinamide, 2, 4γ (H_2O)
D,L-Amygdalin acid, 3, 5γ (H_2O)

Detection: uv, I_2,H_2SO_4 - charring.

Section 7. Standards of Identity, Purity, and Tests for D,L-Amygdalin.

(1) Powder form:

(a) Molecular formula: $C_{20}H_{27}NO_{11}$;

(b) Molecular weight: 457.4;

(c) Description: White powder;

(d) Solubility: (mg./ml.) Water 350; Methanol 100+; Chloroform 0.1;

(e) Stability:

1. Solution: A solution of ten (10) mg. in one (1) ml. water shows

no degradation as indicated by gas chromatography, after twenty-four (24) hours.

2. Bulk: A sample stored at sixty (60) degrees Celsius [~~60°C~~] for thirty (30) days shows no degradation as indicated by gas chromatography.

(f) Elemental composition:

Carbon	52.51
Hydrogen	5.95
Nitrogen	3.06
Oxygen	38.48

(g) Water: The compound shall not [~~may~~] contain [~~no~~] more than six (6) percent water, determined by Karl-Fischer;

(h) Infrared spectrum: The infrared spectrum conforms to reference material;

(i) Ultraviolet absorption: (H_2O)

Alpha max	E
268 nm	206
262 nm	300
257 nm	280
252 nm	200

(j) Optical rotation:

$$[\alpha]_D^{21} = -52^\circ \ (1, H_2O)$$

(k) Nuclear magnetic resonance: (D_2O)

Chemical Shift (δ)	Pattern	No. Protons	Assignment
3.2-5.2	m	14	Glucosyl protons
5.9	s	1/2	H - C - C = N (L-form)
6.1	s	1/2	H - C - C = N (D-form)
7.6	s	5	Phenyl protons

Internal Reference for Assay: Pyrocatechol, 6.9δ;

(l) Gas chromatography:

1. Column: three (3) percent [~~3%~~] OV-1 on 100/200 Chromosorb W-HP glass column, 6' x 2 mm;

2. Carrier gas: N_2, forty (40) ml. per minute [~~/min~~];

3. Oven temperature: 240 degrees [~~°~~] to 275 degrees Celsius [~~°C~~] programmed at two (2) ml. per minute;

4. Sample: TMS-derivative (Prepare by dissolving one (1) mg. in five-tenths (0.5) ml. tri-sil with gentle heat.);

5. Detection: FID at 280 degrees Celsius [~~°C~~];

(m) Thin layer chromatography:

1. Adsorbent: SiO_2-GF;

2. Solvent system: n-BuOH/HOAc/H_2O) (12:3:1);

3. Sample: 100γ , 200γ , (H_2O);

4. Detection: I_2, UV, $(NH_4)_2SO_4$ - charring;

(n) Purity: The compound consists of about 50:50 D,L-material. There shall not be [~~is to be no~~] more than three (3) percent [~~3%~~] total organic impurities. The compound shall not [~~may~~] contain [~~no~~] more than six (6) percent [~~6%~~] water;

(o) Suggested identity tests:

1. Infrared spectrum;

2. Ultraviolet absorption; or

3. Nuclear magnetic resonance;

(p) Suggested assay procedures:

1. Thin layer chromatography;

2. Karl-Fischer determination; or

3. Gas chromatography.

(2) Sterile injectable form:

TEST	SPECIFICATION
Content uniformity	Ninety (90) to 110 percent [%] of label
HPLC Method Column-300 mm. x 4 mm. I.D. Lichrosorb RP8 Mobile phase - 25% CH_3OH in H_2O Flow rate - 2 ml./min. Detector/sensitivity-uv at 254 nm./0.02 aufs.	The total of all uv absorbing impurities shall not exceed five (5) percent [~~6%~~] of this chromatogram.
Moisture - determine by Karl-Fischer	less than two (2) percent [~~2%~~]
Weight variation	Conforms to current USP
pH of reconstituted solution	4.0 to 8.0
Color of solution	Colorless
Clarity and completeness of solution	Conforms to current USP
Particulate matter	Conforms to current USP
USP sterility test	Sterile
USP pyrogen test	Nonpyrogenic at 600 mg./kg.
Thin layer chromatography Adsorbent: Silica gel GF Solvent system: n-BuOH/HOAc/H_2O, 4/1/1 Sample applied: 400, 200γ (H_2O) References: D,L-Amygdalin, 200γ (H_2O) D,L-Amygdalinamide, 1, 2γ (H_2O) D,L-Amygdalin acid, 1, 2γ (H_2O) Detection: uv, I_2, 30% H_2SO_4 - charring.	Compares favorably to reference material

Section 8. Adulterated [~~When~~] Amygdalin [~~Deemed Adulterated~~]. Amygdalin shall be [~~deemed to be~~] adulterated if:

(1)[~~(a)~~] [~~If~~] It consists in whole or in part of a [~~any~~] filthy, putrid, or decomposed substance; [~~or~~]

(2) [~~(b) If it has been~~] Produced, prepared, packed, or held under unsanitary conditions where[~~by~~] it may have been contaminated with filth or [~~whereby it may have been~~] rendered injurious to health; [~~or~~]

(3) [~~(c) If~~] Its container is composed in whole or in part of a [~~any~~] poisonous or deleterious substance which may render the contents injurious to health;

(4) [~~(2) If~~] Its strength differs from, or its quality or purity falls below, the standard set forth in this administrative regulation. The [~~Such~~] determination of [~~as to~~] strength, quality, or purity shall be made in accordance with the tests or methods of assay [~~set forth~~] in this administrative regulation;

(5) [~~(3) If~~] Its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(6) It [~~(4) If amygdalin~~] has been:

(a) Mixed or packed [~~therewith so as~~] to reduce its quality or strength; or

(b) Substituted wholly or in part [~~therefor~~].

Section 9. Misbranded [~~When~~] Amygdalin [~~Deemed Misbranded~~]. (1) Amygdalin shall be [~~deemed to be~~] misbranded if:

(a) [~~(1) If its~~] Labeling is false or misleading in any particular;

(b) [~~(2) If~~] In package form, unless it bears a label containing:

1. [~~(a) The~~] Name and place of business of the manufacturer, and [~~the~~] name and place of business of the packer or distributor, if other than manufacturer; and

2. [~~(b)~~] An accurate statement of the quantity of the contents in [~~terms of~~] weight, measure, or numerical count; [~~provided that~~] reasonable variations shall be permitted;

(c) A [~~(3) If any~~] word, statement, or other information required by 21 CFR 201.1 to 201.317, incorporated by reference, and [~~or under authority of~~] this administrative regulation to appear on the label or labeling is not prominently placed [~~thereon~~] with clarity [~~such conspicuousness~~] ([~~as~~] compared with other words, statements, designs, or devices, in the labeling) and in [~~such~~] terms [~~as to render it~~] likely to be read and understood by the ordinary individual under customary conditions of purchase and use. A copy of 21 CFR 201.1 to 201.317 shall be on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and available for public inspection and copying, Monday through Friday, 8 a.m. until 4:30 p.m.;

(d) The [~~(4) Unless its~~] label does not state [~~bears~~]:

1. [~~(a)~~] The common or usual name of amygdalin;

2. [~~(b) Adequate~~] Directions for use; and

3. [~~(c) Such adequate~~] Warnings against:

a. Use in [~~those~~] pathological conditions where a danger to health exists;

b. Use [~~or~~] by children where a danger to health exists; and [~~its use may be dangerous to health, or against~~]

c. Unsafe dosage, [~~or~~] methods, or duration of administration or application[~~, in such manner and form, as are necessary for the protection of users~~];

(e) [~~(5) If~~] It has been found by the cabinet [~~department~~] to be apt [~~liable~~] to deteriorate [~~deterioration~~], unless it is packaged in a manner to protect public health [~~such form and manner~~], and its label bears a statement of [~~such~~] precautions;

(f) The [~~(6)(a) If its~~] container is [~~so~~] made, formed, or filled [~~as~~] to be misleading; [~~or~~]

(g) [~~(b) If~~] It is an imitation of another substance; [~~or~~]

(h) [~~(c) If~~] It is offered for sale under the name of another substance;

(i) [~~(7) If~~] It is dangerous to health if [~~when~~] used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling [~~thereof~~];

(j) [~~(8) If:~~

~~(a) It is~~] Intended for use by man [~~which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription~~] unless, prior to dispensing, its label bears the statement "Caution: Kentucky law prohibits dispensing without prescription;" or

(k) The [~~(b) Its~~] label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless [~~it is~~] dispensed or sold on a prescription of an authorized practitioner, and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of the [~~such~~] prescription, and the name of the [~~such~~] licensed practitioner. Amygdalin [~~Such~~] prescriptions shall not be refilled.

(2) [~~(9)~~] Amygdalin sold on a prescription of a practitioner shall be exempt from the requirements of this section if:

(a) The [~~Such~~] practitioner is licensed by law to administer amygdalin; and

(b) Amygdalin bears a label containing:

1. The name and place of business of the seller;

2. The serial number and date of the [~~such~~] prescription; [~~and~~]

3. The name of the [~~such~~] practitioner; and

4. The name of the patient for whom prescribed.

(3) [~~(10)~~] It is not the intention of subsection (1)(b)1 [~~(2)(a)~~] of this section to require the name and place of business of the wholesaler to appear upon the label of the package.

Section 10. Inspections. The cabinet [~~department~~] or its duly authorized agent shall have free access at all reasonable times to a [~~any~~] factory, warehouse, or establishment in which amygdalin is manufactured, processed, packed, or held for sale for the purpose of:

(1) [~~Of~~] Inspecting the [~~such~~] factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling [~~thereon~~], to determine if any of the provisions of this administrative regulation are being violated, [~~; and~~]

(2) [~~Of~~] Securing samples or specimens of [~~any~~] amygdalin. It shall be the duty of the cabinet [~~department~~] to make or cause to be made examinations of samples secured under the provisions of this section to determine if a [~~whether or not any~~] provision of this administrative regulation is being violated, [~~; and~~]

(3) [~~Of~~] Examining or reproducing books, papers, documents, or other evidence pertaining to [~~such~~] amygdalin.

Section 11. Detention or Quarantine of Amygdalin if Adulterated or Misbranded. (1) If [~~Whenever~~] a duly authorized agent of the cabinet [~~department~~] finds, or has probable cause to believe, that any amygdalin is adulterated or misbranded pursuant to [~~within the meaning of~~] this administrative regulation, the agent [~~he~~] shall affix [~~to such article~~] a tag or [~~other appropriate~~] marking, giving notice that [~~such~~] amygdalin is, or is suspected of being, adulterated or misbranded and has been detained or quarantined. The tag or marking shall be a [~~and~~] warning [~~all persons~~] not to remove or dispose of [~~such~~] amygdalin [~~by sale or otherwise~~] until permission for removal or disposal is given by the [~~such~~] agent or [~~by~~] the district court. A [~~No~~] person shall not remove or dispose of [~~such~~] detained or quarantined amygdalin [~~by sale or otherwise~~] without [~~such~~] permission.

(2) If [~~When~~] amygdalin detained or quarantined under subsection (1) of this section has been found by the [~~such~~] agent to be adulterated or misbranded, the agent [~~he~~] shall petition the judge of the district court where [~~in whose jurisdiction~~] the amygdalin is detained or quarantined for an order for condemnation. [~~of such article; provided that~~] Nothing in this section shall require [~~that~~] the cabinet [~~department~~] or its agent to [~~shall~~] go to court if destruction of the quarantined amygdalin is accomplished by agreement made in writing with the owner [~~of the property~~]. If the [~~When such~~] agent has found [~~that~~] amygdalin [~~so~~] detained or quarantined is not adulterated or misbranded, the agent [~~he~~] shall remove the tag or [~~other~~] marking.

Section 12. Revocation or Suspension of License. The cabinet [~~department~~] may suspend or revoke a [~~any~~] license to manufacture amygdalin for violation of a [~~any~~] provision of this administrative regulation after proper notice and an opportunity for a due process hearing.

(1) Upon notification of intent to suspend or revoke or upon suspension or revocation of a manufacturer's license, the manufacturer may request a hearing. The request for a hearing shall be made in writing on Form DCB-2, "Request for Hearing," and received by the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DCB-2, "Request for Hearing," revised October 1993, is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.

(2) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(4) A transcript of the hearing shall not be made unless request-

ed. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall make written findings of fact and conclusions of law, and render a final decision based upon the evidence presented.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 26, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: All amendments are required to comply with KRS Chapter 13A. The type and number of entities affected cannot be determined but is probably zero. This administrative regulation has been in effect since 1981 and there have been no applications to manufacture laetrile and no inquiries about the manufacture of laetrile. Furthermore, Kentucky has no manufacturers of any drug within the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because the regulation incorporates the federal regulations for a drug manufacturer. Thus, a manufacturer would have no additional costs attributable to Kentucky's regulation nor would any savings ensue.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation that is not already required by federal regulations for manufacturers of other drugs.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There are no anticipated costs or savings to the agency because no one has sought licensure to manufacture laetrile in Kentucky.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork anticipated by this regulation since no applications for manufacture of laetrile have been requested since 1981 when the regulation was promulgated.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because KRS 217.950 requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts, overlaps or duplicates this regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the requirements apply to all drug manufacturers regardless of type, size or location.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations are 21 CFR 201.1 to 201.59, 21 CFR 210.1 to 210.3, and 21 CFR 211.1 to 211.208. However, neither federal law nor regulation regulates laetrile because it is unapproved by the Food and Drug Administration; and interstate commerce and importation into the U.S. are illegal. The amendments are necessary to comply with KRS Chapter 13A.

2. State compliance standards. The general criteria for the manufacture of drugs are set forth in KRS 217.005 to 217.215.

3. Minimum or uniform standards contained in the federal mandate. The criteria for drug manufacturers are set forth in 21 CFR 201.1 to 201.59, 21 CFR 210.1 to 210.3, and 21 CFR 211.1 to 211.208.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The state regulation will apply requirements identical to those in the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

900 KAR 2:030. Quality of care rating system for long-term care facilities.

RELATES TO: KRS 216.550
STATUTORY AUTHORITY: KRS 194.050, 216.550
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed to establish a system for rating the quality of care provided by long-term care facilities. The purpose of this administrative regulation is to set forth the uniform criteria for evaluation of long-term care facilities based on their compliance with licensure and statutory requirements.

Section 1. Definitions. (1) "Biologicals" means medicinal preparations made from living organisms and their products, including but not limited to serums, vaccines, antigens and antitoxins.

(2) "Plan of correction" means a written proposal by the licensee to remedy the regulatory violations cited by the cabinet; the proposal includes dates by which the remedies will have been made.

(3) "Representative sampling" means information obtained at random from the residents and families or legal guardians of the residents at the facility in question, together with that obtained from ombudsman committees in the district wherein the facility is located, and the staff of the long-term care facility in question. In family care homes, all residents shall be questioned; in all other long-term care facilities ten (10) percent or fifteen (15) of the residents, whichever is greater, shall be questioned.

~~[Section 2. (1) For the purposes of the determination of quality of care of long-term care facilities in the Commonwealth of Kentucky, the following are declared to be Level I areas of concern:~~

~~(a) Medical services;~~
~~(b) Nursing service;~~
~~(c) Drugs and biologicals;~~
~~(d) Dietary and nutritional service;~~
~~(e) Life safety code or other applicable building code;~~
~~(f) Physical and restorative therapy;~~
~~(g) Physical environment;~~

~~(h) Administration; and~~
~~(i) Patient rights.~~
~~(2) The following are declared to be Level II areas of concern:~~
~~(a) Social services and activities; and~~
~~(b) Recordkeeping.~~]

Section 2. [~~3.~~] Pursuant to the provisions of KRS 216.550(1) and in accordance with KRS 216.550(3), applicable minimum state statutory and licensure requirements shall serve as the uniform criteria for the evaluation of long-term care facilities as to quality of care. [~~Appendices I through VI are the applicable minimum licensure requirements arranged according to quality of care area of concern.~~]

Section 3. [~~4.~~] (1) The cabinet shall, at the time of its annual licensure inspection, conduct an evaluation of long-term care facilities as to quality of care. Each long-term care facility shall, upon inspection and evaluation, be assigned either a superior rating, an unrated license, or a conditional rating.

(a) To receive an unrated license as to quality of care, each long-term care facility must meet the applicable minimum state requirements for licensure.

(b) To achieve a "superior" rating as to quality of care, each long-term care facility must demonstrate to the cabinet that the facility exceeds minimum standards for licensure in six (6) of the ten (10) [~~eleven (11)~~] areas of concern identified in KRS 216.550(1)(a) through (j) [~~(k) and as set forth in Section 2 of this regulation~~], and meets at least the minimum requirements of all other applicable state licensure administrative regulations pertaining to long-term care facilities. In addition to meeting the minimum licensure requirements, achievement of at least one (1) of the goals set forth in six (6) of the ten (10) [~~eleven (11)~~] areas of concern listed in Appendices A through G [~~F~~] shall result in a superior rating.

(c) Failure to comply with the requirements set forth in subsection (1)(a) of this section and Section 3 of this administrative regulation or receipt of a Type "A" or "B" citation pursuant to KRS 216.555 shall result in a "conditional" rating. Notice of a conditional rating shall be sent by certified mail to the licensee within five (5) working days of inspection. Upon receipt of a "conditional" rating, the licensee shall prepare, within ten (10) working days of assignment, a plan of correction for all cited deficiencies and shall submit said plan for the cabinet's approval. A "conditional" rating shall be effective from the time of the rating inspection until either:

1. Upon correction of deficiencies as specified on the approved plan of correction;

2. Such time as the cabinet finds the facility in compliance with minimum licensure standards;

3. The determination of the cabinet is reversed upon appeal pursuant to KRS 216.553; or

4. Correction of Type A or Type B citations within the approved time.

(2) For the purpose of assignment of a rating, the evaluation shall take into consideration findings from other official reports, surveys, interviews, investigations, and inspections.

(3) In making its determination as to the degree of compliance with the requirements of this administrative regulation and as to the overall quality of care and services in a long-term care facility, the cabinet shall consider interviews and surveys of a representative sample of residents, families and legal guardians of residents, ombudsman committees in the district wherein the facility is located, and the staff of the long-term care facility in question.

(4) Any licensee aggrieved by an assignment of rating pursuant to KRS 216.550 may appeal said assignment to the cabinet within twenty (20) days after notice of assignment in accordance with the requirements of KRS 216.567. For the purposes of appeal of a particular rating pursuant to KRS 216.553, a determination of the cabinet shall be deemed final upon receipt of written notice of rating indicated by the date of the return receipt or if receipt is refused, upon date of refusal. In no event shall any rating assigned by the cabinet be posted until the final decision of the cabinet pursuant to KRS 216.567.

Section 4. [~~5.~~] If, at any time during the rating year, the cabinet finds a long-term care facility out of compliance with minimum licensure requirements or exceeds the minimum licensure requirements within six (6) of the ten (10) [~~eleven (11)~~] areas as set forth in KRS 216.550(1)(a) through (j) [~~(k) and Section 2 of this regulation~~], the cabinet may alter the facility's quality of care rating accordingly.

Section 5. [~~6.~~] In the event of a change of ownership, the rating obtained by the prior owner shall continue in effect until the next regularly scheduled licensure inspection [~~unless modified after inspection by the cabinet upon its own initiative or undertaken upon request~~].

Section 6. [~~7.~~] The following Appendices A through G [~~F~~] set forth guidelines for use by licensees of long-term care facilities in their efforts to obtain a "superior" rating for the facility in question. A "superior" rating shall be issued to any long-term care facility accomplishing at least one (1) of the goals set forth in six (6) of the ten (10) [~~eleven (11)~~] areas listed in KRS 216.550(1)(a) through (j) [~~(k) and Section 2 of this regulation~~].

[~~APPENDIX I~~
~~FAMILY CARE HOMES~~

~~All references are to sections of 902 KAR 20:041, unless otherwise indicated.~~

~~A. Level I~~
~~(1) Medical Services~~
~~Section 4(1)(a) through (d)~~
~~(2) Nursing Services~~
~~Section 4(1)(i)~~
~~Section 4(2)(a)1 through 4~~
~~(3) Drugs and Biologicals~~
~~Section 4(1)(e) through (h)~~
~~(4) Dietary and Nutritional Service~~
~~Section 4(3)(a) through (i)~~
~~(5) Life Safety Code or Other Applicable Building Code~~
~~Section 6(3) through (6)~~
~~(6) Physical and Restorative Therapy~~
~~No requirements for licensure~~
~~(7) Physical Environment~~
~~Section 4(2)(b), (c)~~
~~Section 4(4)(a) through (g)~~
~~Section 5~~
~~Section 6(1),(2)~~
~~(8) Administration~~
~~Section 1~~
~~Section 3(1) through (6), (9) through (11), (14)~~
~~(9) Patient Rights~~
~~Section 3(13)~~
~~Section 4(2)(d)~~

~~B. Level II~~
~~(1) Social Services and Activities~~
~~Section 3(7)~~
~~(2) Recordkeeping~~
~~Section 3(8)~~
~~Section 3(12)~~

APPENDIX II
PERSONAL CARE HOME

All references are to sections of 902 KAR 20:036, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(1)(a), (e), (g)
Section 4(1)(j)
(2) Nursing Services
Section 4(1)(b); (h); (k)
Section 4(3)(a) through (e)
(3) Drugs and Biologicals
Section 4(1)(c), (f)
(4) Dietary and Nutritional Service
Section 4(2)(c)
(5) Life Safety Code or Other Applicable
Building Code 902 KAR 20:031, as applicable
(6) Physical and Restorative Therapy
No requirements
(7) Physical Environment
Section 4(1)(i)
Section 4(2)(a), (b)
(8) Administration
Section 1
Section 3(1)(a), (b)
Section 3(2)
Section 3(3)(a) through (d)
Section 3(6)(a) through (c)
Section 3(7)(a) through (e)3
Section 3(7)(e)6 through 12
Section 3(7)(f)
(9) Patient Rights
Section 3(4), (5)
Section 3(7)(e)4, 5

B. Level II
(1) Social Services and Activities
Section 4(4)(a), (b)
(2) Recordkeeping
Section 3(8), (9)
Section 4(1)(d)

APPENDIX III
NURSING HOMES

All references are to sections of 902 KAR 20:048, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(1)(a) through (d)
Section 4(6), (7)
Section 4(5)(f)5a, b, c
(2) Nursing Services
Section 3(9)(c)5 through 7
Section 4(2), (4)
(3) Drugs and Biologicals
Section 3(9)(c)8
Section 4(5)
(4) Dietary and Nutritional
Section 3(9)(c)10
Section 4(11)(a)
(5) Life Safety Code or Other Applicable
Building Code 902 KAR 20:046, as applicable
(6) Physical and Restorative Therapy
Section 3(9)(c)9a, b, c
Section 4(3)
(7) Physical Environment
Section 4(11)(b), (c)
(8) Administration
Section 3(1)
Section 3(2)(a), (b)
Section 3(3)(d)
Section 3(4)(a) through (d)
Section 3(6)(a) through (d)
Section 3(7)
Section 3(8)(a) through (f)
Section 3(9)(a), (b)
Section 3(9)(c)1, 2, 3, 4, 11, 12
Section 3(9)(d)
Section 3(9)(e)
Section 3(9)(f)1, 2
(9) Patient Rights
Section 3(5)

B. Level II
(1) Social Services and Activities
Section 4(8), (9), (10)
(2) Recordkeeping
Section 3(3)(a), (b), (c); (10)

APPENDIX IV
INTERMEDIATE CARE FACILITY

All references are to sections of 902 KAR 20:051, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(2)
Section 4(6)
(2) Nursing Services
Section 3(9)(c)5
Section 4(1), (3), (5)
(3) Drugs and Biologicals
Section 3(9)(c)6
Section 4(4)
(4) Dietary and Nutritional Services
Section 4(10)(c)
Section 3(9)(c)7
(5) Life Safety Code or Other Applicable
Building Code 902 KAR 20:056, as applicable
(6) Physical and Restorative Therapy
No requirements
(7) Physical Environment
Section 4(10)(a), (b)
(8) Administration
Section 3(1) through (3); (4)(a), (c), (d); (6) through (8)
Section 3(9)(c)1 through 4, 8, 9
Section 3(9)(a), (b), (d) through (f)
(9) Patient Rights
Section 3(4)(b), (5)

B. Level II
(1) Social Services and Activities
Section 4(7), (8), (9)
(2) Recordkeeping
Section 3(10)

~~APPENDIX V~~
~~INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED~~

~~All references are to sections of 902 KAR 20:086, unless otherwise indicated.~~

~~A. Level I~~
~~(1) Medical Services~~
~~Section 3(7)(a), (b)~~
~~Section 4(1), (4), (8), (14)~~
~~(2) Nursing Services~~
~~Section 3(11)(i)~~
~~Section 4(5), (7)~~
~~(3) Drugs and Biologicals~~
~~Section 3(11)(j)~~
~~Section 4(6)~~
~~(4) Dietary and Nutritional Services~~
~~Section 3(11)(k)~~
~~Section 4(16)(c)~~
~~(5) Life Safety Code or other applicable Building Code 902 KAR 20:056, as applicable~~
~~(6) Physical and Restorative Therapy~~
~~Section 4(11), (12), (13)~~
~~(7) Physical Environment~~
~~Section 4(16)(a), (b)~~
~~(8) Administration~~
~~Section 3(1) through (3)~~
~~Section 3(5)(a), (c) and (d)~~
~~Section 3(7)(c), (d) and (e)~~
~~Section 3(8), (9)~~
~~Section 3(11)(a) through (h), (l) through (n)~~
~~Section 4(2), (3)~~
~~(9) Patient Rights~~
~~Section 3(5)(b) and (6)~~

~~B. Level II~~
~~(1) Social Services and Activities~~
~~Section 4(9), (10), (15)~~

~~(2) Recordkeeping~~
~~Section 3(4), (10)~~

~~APPENDIX VI~~
~~SKILLED NURSING FACILITIES~~

~~All references are to sections of 902 KAR 20:026, unless otherwise indicated.~~

~~A. Level I~~
~~(1) Medical Services~~
~~Section 4(1), (6), (7)~~
~~(2) Nursing Services~~
~~Section 3(8)(d)3, 4, 5~~
~~Section 4(2), (4), (5)(f)4~~
~~(3) Drugs and Biologicals~~
~~Section 3(8)(d)6~~
~~Section 4(5)(a) through (f)~~
~~(4) Dietary and Nutritional Services~~
~~Section 3(8)(d)8~~
~~Section 4(10)(a)~~
~~(5) Life Safety Code or Other Applicable Building Code 902 KAR 20:021, as applicable~~
~~(6) Physical and Restorative Therapy~~
~~Section 3(8)(d)7~~
~~Section 4(3)~~
~~(7) Physical Environment~~
~~Section 4(10)(b), (c)~~
~~(8) Administration~~
~~Section 3(1), (2), (3)(a), (b), (c), (e)~~
~~Section 3(5) through (7)~~
~~Section 3(8)(a), (b), (c), (d)1, 2~~
~~Section 3(8)(d)9, (e)~~
~~Section 4(5)(f)5~~
~~(9) Patient Rights~~
~~Section 3(3)(d), (4)~~

~~B. Level II~~
~~(1) Social Services and Activities~~
~~Section 4(8), (9)~~
~~(2) Recordkeeping~~
~~Section 3(9)]~~

APPENDIX A
FAMILY CARE HOMES
(Area of Concern, Goals)

Medical Services
(1) All residents receive annual physicals by a physician.
(2) Residents have annual evaluation by dentist and ophthalmologist.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Service
(1) Residents are up and dressed during the day except during short illnesses or naps.
(2) If operator is not a licensed nurse, residents are evaluated by licensed nurse semiannually and evidence is shown of recommendations being acted upon.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals
(1) Residents may select their own pharmacy/pharmacist.
(2) Drugs and biologicals not covered under the facility's basic rate.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services
(1) Each resident selects at least one meal per week.
(2) Menus are prepared with assistance of qualified nutritionists as defined in 902 KAR 20:036, Section 2(10).
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code
(1) Facility has smoke alarms of sufficient quantity to cover the entire dwelling.
(2) Facility interior and exterior are modified so that each resident may exit unassisted.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy
(1) Transporting of resident to and assistance in arranging needed therapy; e.g., physical, speech.
(2) Availability of special devices required by resident for maximum functioning; e.g., eating, reading, hearing devices.
(3) Other, if submitted to and approved by the Cabinet for Human

Resources.

[~~Physical Environment~~

~~(1) Resident's personal belongings are displayed in facility.~~

~~(2) Dwelling is air conditioned in all spaces occupied by residents.~~

~~(3) Residents have safe and pleasant outside area for their use.~~

~~(4) Dwelling has common area for unrestricted use by residents and the families or friends that is separate from their bedroom.~~

~~(5) Other, if submitted to and approved by the Cabinet for Human Resources.~~]

Social Services and Activities

(1) Weekly planned and supervised tours, visits, shopping or attendance out in community.

(2) At least one hour daily planned and supervised in-house social or recreational activities, using appropriate supplies and equipment; exclusive of television and radio.

(3) If desired by resident, the newspaper of the resident's choice is available to the resident.

(4) Facility has daily reality orientation program for each confused resident.

(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

(1) Resident's personal funds and benefits are controlled by an individual or entity having no financial interest in the resident's funds or the resident is able to and does control his own finances.

(2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

(1) Records of all fees and charges to resident.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

(1) Operator is professionally qualified in a health services field.

(2) Operator shows evidence of having attended 10 hours of training in long-term care services in a twelve (12) month period in programs approved by the Cabinet for Human Resources, Division of Licensing and Regulation; this is in addition to 902 KAR 20:041, Section 1(5).

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX B
PERSONAL CARE HOMES
(Area of Concern, Goals)

Medical Services

(1) Physician spends at least one hour per week interacting with residents at facility for each 25 residents over and above that which is normally required for patient care.

(2) Dental services provided at the facility.

(3) Ophthalmologist examinations for residents annually.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services

(1) If operator is not a licensed nurse, residents are evaluated by a licensed nurse at least semiannually and evidence is shown of recommendations being acted upon.

(2) Nursing service has an organized call-in program to effectively deal with employee absences.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals

(1) Residents may select their own pharmacy/pharmacist.

(2) Facility uses 24-hour unit dose system.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services

(1) Residents select at least one meal per week.

(2) Available self-help devices or adaptive devices and program for use.

(3) Facility provides menus for residents to choose at least one meal next day.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code

(1) Organized safety committee and evidence of its effectiveness.

(2) Local fire department provides in-service to staff and residents yearly on fire prevention and emergency action in the event of a fire.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy

(1) An exercise program designed by a licensed physical therapist is provided for those residents who have an adequate level of functioning and are physically able to participate.

(2) Physical therapy needs are part of initial evaluation of residents in facility.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

[~~Physical Environment~~

~~(1) Facility is air conditioned in all spaces occupied by residents.~~

~~(2) Residents have safe and pleasant outside area for their use.~~

~~(3) Other, if submitted to and approved by the Cabinet for Human Resources.~~]

Social Services and Activities

(1) An organized resident council selects at least 25 percent of the activities.

(2) Separate staff for social services and activities for facilities with at least 50 residents.

(3) Activities out of facility at least once a week.

(4) Pet therapy program organized for residents with local or state humane society or other benevolent groups.

(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

(1) Resident's personal funds and benefits are controlled by an individual having no financial interest in the resident's funds or the resident is able to control his own finances.

(2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.

(3) Organized resident council functions and facility responds to their requests and inquiries and evidence is available to demonstrate such.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

(1) Medical records are designed and maintained by an accredited records technician, registered records administrator, or medical records designee has consultation from accredited records technician

or registered records administrator.

(2) Someone other than charge nurse or administrator is designated in charge of records.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

(1) Tuition assistance program for employees.

(2) Administrators who are not licensed nursing home administrators show evidence of having attended 10 hours per year of continuing education class that has been approved by the Kentucky Board of Nursing Home Administrators.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX C
INTERMEDIATE CARE FACILITIES
(See Appendix F [E])

APPENDIX D
SKILLED NURSING FACILITIES
(See Appendix F [E])

APPENDIX E
NURSING FACILITIES
(See Appendix F)

APPENDIX F [E]
NURSING HOMES (including Alzheimer's)
(Area of Concern, Goals)

Medical Services

(1) Physician participates on voluntary basis in in-service education program and inpatient care planning other than diagnosis and treatment.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services

(1) Organized call-in program to deal with the problems of employee absences.

(2) A comprehensive nursing audit program for all residents

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals

(1) Residents may select their own pharmacy/pharmacist.

(2) 24-hour per day unit dose system for drug administration.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services

(1) A volunteer program with training and return demonstrations in assisting with serving and feeding so that all residents may eat at the same time.

(2) Participation of relatives and friends in social occasions, including but not limited to birthday parties and cookouts.

(3) Dietary supplements that are made at the facility from approved recipes; e.g., supplemental milkshakes.

(4) Facility provides menus for residents to choose at least one meal the next day.

(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code

(1) An organized safety committee and evidence of their effectiveness and impact on the facility.

(2) Local fire department provides in-service to staff and residents yearly on fire prevention and emergency action in the event of a fire.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy

(1) Component flexible; must be submitted to the Cabinet for review and approval.

[~~Physical Environment~~

~~(1) Facility is air conditioned in all spaces occupied by residents.~~

~~(2) Residents are provided a safe and pleasant outside area.~~

~~(3) Other, if submitted to and approved by the Cabinet for Human Resources.~~]

Social Services and Activities

(1) An organized resident council selects at least 25 percent of activities.

(2) A guardian/relative/friend counseling program to deal with the problems and maintain continual communication.

(3) Pet therapy program organized for residents with local or state humane society or other benevolent groups.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

(1) Organized resident council functions and facility responds to their requests and inquiries; evidence is available to demonstrate facility's response.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

(1) Decubitus documentation is regularly (at least weekly) updated; includes at least a monthly photograph of the decubitus.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

(1) Organization and utilization of a welcoming committee composed of residents, staff of the facility and at least one member of the administration to provide assistance to new residents in transition to life in the long-term care facility.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX G [F]
INTERMEDIATE CARE FACILITIES
FOR THE MENTALLY RETARDED
(Area of Concern, Goals)

With the exception of those areas of concern dealing with patient rights and social services and activities, intermediate care facilities for the mentally retarded share the goals as set forth in Appendix E. As for patient rights and social services and activities, the following goals apply:

Patient Rights

(1) Facility has voluntary family/guardian council that meets at least monthly and makes inquiries and recommendations to the facility; evidence is available that the facility has acted upon the inquiries and recommendations and the council has received a response.

Social Services and Activities

(1) Facility has organized occupational therapy program with private industry so that residents may learn and benefit from their

work in a practical setting.

WILLIAM M. GARDNER, Inspector General
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 5, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing.

REGULATORY IMPACT ANALYSIS

Contact person: Eric Friedlander, Ralph VonDerau
(1) Type and number of entities affected: 1,050 providers of long-term care.
(a) Direct and indirect costs or savings to those affected: There should be no additional costs associated with this amendment.
1. First year: No additional costs.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: There should only be minimal affects associated with processing requests for extensions.
(a) Direct and indirect costs or savings: The costs should be limited to reprinting of this administrative regulation and reprinting the nursing home reform publication.
1. First year: $1,000 for reprinting administrative regulation and publication.
2. Continuing costs or savings: No additional costs since reprinting costs are a part of continuing budget.
3. Additional factors increasing or decreasing costs: The proposed amendment relating to upgrading a "conditional" rating may generate additional appeals.
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation required amendment to conform to KRS Chapter 13A. Statutory and regulatory amendments were necessary to reflect correct citations and current construction.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists.
(a) Necessity of proposed administrative regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This amendment is proposed to harmonize this administrative regulation with existing statutes.
(6) Any additional information or comments: No additional comments.
TIERING: Is tiering applied? Yes. While this administrative regulation applies to all long-term care facilities, differentiations are made based on the type of facility. This amendment does not affect this tiering.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 216.550, 216.555, 216.557, 216.560, 216.563, 216.565, 216.577
STATUTORY AUTHORITY: KRS 194.050, 216.555, 216.557, 216.563, 216.577
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, administrative regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This administrative regulation is designed to set forth the criteria and, where feasible, the specific acts.

Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.
(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).
(3) "Administrator" means the administrator of a long-term care facility.
(4) "Citation" means a written notification of violation of administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this administrative regulation. A citation is not a statement of deficiency.
(5) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.
(6) "Nonambulatory" means unable to walk without assistance.
(7) "Nonmobile" means unable to move from place to place.
(8) "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.
(10) "Type A violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this administrative regula-

tion. Said violation presents an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm will occur.

(11) "Type B violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this administrative regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this administrative regulation.

Section 2. If, upon inspection of a long-term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or administrative regulations alleged to have been violated.

Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.

(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.

(3) A "Type A" violation is subject to a civil penalty in an amount not less than $1,000 nor more than $5,000 for each and every violation.

(4) Where a licensee has failed to correct a "Type A" violation within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of $500 for each day such deficiency continues beyond the date specified for correction.

(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 4. (1) The criteria for the conditions which constitute "Type A" and "Type B" violations are:

(a) The uniform criteria established for rating quality of care in accordance with KRS 216.550;

(b) The provisions of KRS 216.515 to 216.525; and

(c) Applicable federal laws and regulations governing the certification of long-term care facilities under Titles 18 and 19 of the Social Security Act.

(2) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which constitutes an imminent danger and substantial risk of death or serious mental or physical harm to a resident is classified a "Type A" violation.

(3) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger, is classified a "Type B" violation.

(4) The criteria are to be reviewed at least quarterly for the purpose of more clearly defining the specific acts or circumstances which constitute "Type A" and "Type B" violations.

Section 5. (1) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of death or serious physical or mental harm to a resident or patient of the long-term care facility shall constitute "Type A" violations.

(a) In all long-term care facilities.

1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.

2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.

3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician (and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(6) [~~(5)~~](e) and 314.011(10) [~~(9)~~](e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.

4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.

5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.

6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy- two (72) degrees which shall be provided in occupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.

7. In the event of an error in medication, the attending physician is not advised and the error is not recorded within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.

8. Prescription medication is not kept under lock.

9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.

10. There is not at least three (3) days' supply of food in the facility at all times.

11. The care required by admitted residents retained within the facility exceeds the skill of the licensee to provide.

(b) Family care homes.

1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.

2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.

3. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.

4. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.

5. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.

6. The facility has admitted more than three (3) persons as residents.

(c) Personal care homes.

1. Residents of the facility are under the age of sixteen (16) years

or are nonambulatory or nonmobile.

2. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:036 as determined in accordance with 902 KAR 20:036, Section 3(8) [~~(7)~~](f)2.

3. One (1) attendant is not awake and on duty on each floor of the facility at all times.

(d) Intermediate care facilities.

1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:051, in accordance with 902 KAR 20:051, Section 3(10) [~~(9)~~](c)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(e) Skilled nursing facilities and nursing facilities.

1. The licensee does not provide the facility with a director of nursing services who is a registered nurse and who works full time during the day and who does devote full time to the nursing service of the facility.

2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:026, in accordance with 902 KAR 20:026, Section 3(9) [~~(8)~~](d)2, or 902 KAR 20:300, in accordance with 902 KAR 20:300, Section 15(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.

(f) Nursing homes (including Alzheimer's).

1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.

3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.

4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:048, in accordance with 902 KAR 20:048, Section 3(10) [~~(9)~~](c)2, or 902 KAR 20:291, in accordance with 902 KAR 20:291, Section 3(10)(c)2. The cabinet shall use the administrative regulation that corresponds to the facility's license.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.

2. The facility admits as patients those persons who do not have a physical or mental condition which requires developmental nursing services and an active treatment plan.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 20:086, Section 3(11)(c) and in accordance with 902 KAR 20:086, Section 3(11)(f).

4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor.

(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.

(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.

(c) Selectively transfer residents whose care needs are not being adequately met by the long-term care facility.

Section 6. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.

(2) A "Type B" violation is subject to a civil penalty in an amount not less than $100 nor more than $500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.

(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of $200 for each day the deficiency continues beyond the date specified for correction.

(4) Application for an extension of time may be granted by the cabinet upon a showing by the license that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 7. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification

is refused, from the date of refusal.

(2) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security or any resident but which do not create an imminent danger shall constitute "Type B" violations:

(a) In all long-term care facilities.

1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.

2. The facility does not maintain an active program of pest control for all areas of its physical plant.

3. The facility does not serve at least three (3) meals per day with not more then fifteen (15) hours between the evening meal and breakfast and such meals do not meet the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders. Between meal and bedtime snacks are not available, except where medically contraindicated.

4. The licensee knowingly violates the provision of KRS 216.515 and 216.520.

5. A complete medical record is not kept on each patient with all entries current, dated and signed.

6. Patients or residents requiring help in eating are not assisted.

7. Except for those facilities with an integrated heating, ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.

8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902 KAR 45:005).

9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.

10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:

a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.

b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.

11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.

12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not available for resident or patient use.

13. Meals do not correspond to the posted menus; menus are not planned and posted one (1) week in advance; when changes in the menu are necessary, substitutions do not provide equal nutritive value.

14. The facility does not have an administrator who is responsible for the operation of the facility and does not delegate such responsibility in his absence.

(b) Family care homes.

1. The facility does not have a written procedure for providing or obtaining emergency services.

2. Telephone service, if available in the area, is not accessible to the residents.

3. The facility does not have at least one (1) ABC rated fire extinguisher.

4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.

5. Residents are not provided beds at least thirty-three (33) inches wide and six (6) feet long.

6. The facility does not comply with the provisions of 902 KAR 20:041, Section 4(4).

(c) Personal care homes.

1. The facility does not provide each resident with a bed equipped with springs, a clean mattress, a mattress cover, two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.

2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:

a. Policies of the facility with regard to the performance of staff duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS Chapter 620 [~~199.335~~];

e. Patient rights;

f. Procedures for proper application of physical restraints;

g. The aging process;

h. The emotional problems of illness;

i. The use of medication;

j. Therapeutic diets;

k. Activities of daily living; and

l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.

5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:

a. Washing and bathing the body;

b. Shaving;

c. Washing, grooming and cutting hair;

d. Cleaning the mouth and teeth; and

e. Cleaning of finger and toe nails.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

(d) Intermediate care facilities.

1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

6. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

(e) Nursing homes (including Alzheimer's).

1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

(f) Skilled nursing facilities and nursing facilities.

1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

a. Washing and bathing the body;

b. Shaving;

c. Cleaning of finger and toe nails;

d. Cleaning of mouth and teeth; and

e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 20:026, Section 4(9), or 902 KAR 20:300, Section 6(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.

6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 20:026, Section 3(9) [(8)](e), or 902 KAR 20:300, Section 15(3)(c). The cabinet shall use the administrative regulation that corresponds to the facility's license.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:

a. A report of the review and updating of the preadmission updating.

b. A prognosis that can be used in programming and placement;

c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.

2. The facility does not assure that:

a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and

b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 20:086, Section 4(9), and (10).

4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 20:086, Section 3(11)(n).

5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.

Section 8. Civil penalties assessed for "Type A" and "Type B" violations pursuant to KRS 216.557 shall be trebled when a licensee has received a citation for violating a requirement for which it has received a citation and paid a fine during the previous twelve (12) months.

Section 9. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or administrative regulations were violated;

(b) The reasonable diligence exercised by the licensee and efforts to correct violations;

(c) The number and type of previous violations committed by the licensee; and

(d) The amount of assessment necessary to insure immediate and continued compliance

(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560.

WILLIAM M. GARDNER, Inspector General
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 5, 1993

FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled

unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing.

REGULATORY IMPACT ANALYSIS

Contact person: Eric Friedlander, Ralph VonDerau

(1) Type and number of entities affected: 1,050 providers of long-term care.

(a) Direct and indirect costs or savings to those affected: There should be no additional costs associated with this amendment.

1. First year: No additional costs.

2. Continuing costs or savings: No additional costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body: There should only be minimal affects associated with processing requests for extensions.

(a) Direct and indirect costs or savings: The costs should be limited to reprinting of this administrative regulation and reprinting the nursing home reform publication.

1. First year: $1,000 for reprinting administrative regulation and publication.

2. Continuing costs or savings: No additional costs since reprinting costs are a part of continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation required amendment to conform to KRS Chapter 13A. Statutory and regulatory amendments were necessary to reflect correct citations and current construction.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists.

(a) Necessity of proposed administrative regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This amendment is proposed to harmonize this administrative regulation with existing statutes.

(6) Any additional information or comments: No additional comments.

TIERING: Is tiering applied? Yes. While this administrative regulation applies to all long-term care facilities, differentiations are made based on the type of facility. This amendment does not affect this tiering.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 10:050. Refuse bins.

RELATES TO: KRS 211.025, 211.090, 211.180, 16 CFR Part 1301

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize [~~grant~~] the Cabinet for Human Resources [~~the authority~~] to adopt administrative [~~establish~~] regulations relating to all matters of public health for the prevention and control of health hazards. The purpose of this administrative regulation is to establish a standard for certain refuse bins; to prescribe testing conditions and procedures for refuse bins and to set forth procedures for structurally modifying unstable bins or those not complying with the standard. Because unstable refuse bins are a potential hazard to the health and well being of children and because the average life of a refuse bin is estimated to be from ten (10) to fifteen (15) years, standards are required to minimize the risk from injury of the product.

Section 1. Definitions. The following definitions shall apply to all refuse bin administrative regulations:

(1) "Refuse bin" means a metal receptacle having an internal volume one (1) cubic yard or greater, by actual measurement, which temporarily receives and holds refuse for ultimate disposal either by unloading into the body or loading hopper of a refuse collection vehicle or by other means.

(2) "Internal volume" means the actual volumetric capacity of the container. This may not [~~necessarily~~] correspond to the nominal size rating used by industry.

(3) "Tip over" and "tipping over" mean that during the application of either test force described in Section 4 of this administrative regulation, the refuse bin begins to rotate forward about its forward-most ground supports.

(4) "Unstable refuse bin" means a bin which has an actual internal volume of one (1) cubic yard or greater and tips over if [~~when~~] an external vertically downward force is applied to the bin in a position which most adversely affects stability.

(5) "Distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(8) "Retrofit" and "retrofitting" mean the structural modification of a bin to make it stable.

Section 2. Applicability. Refuse bins under the ownership of municipalities or local, state, or federal agencies or their political subdivisions, private individual customers, retail and wholesale businesses [~~such as restaurants, grocery stores, warehouses~~]; manufacturers and other similar establishments or firms on the effective date of this administrative regulation, are exempt from the provisions of this administrative regulation if the [~~; provided, however, such~~] bins introduced into commerce are subject to Section 6 of this administrative regulation.

Section 3. Test Conditions. A refuse bin shall be subject to the required tests under the following conditions.

(1) The refuse bin shall be empty and have its lids or covers in a position which would most adversely affect the stability of the bin [~~when tested~~].

(2) The refuse bin shall be tested on a hard, flat surface. During testing, the bin shall not be tilted from level [~~in such a way as~~] to increase its stability.

(3) Those refuse bins equipped with casters or wheels shall have the casters or wheels positioned in a position which would most adversely affect the stability of the bin and shall be chocked to prevent movement.

(4) The stability of the refuse bin shall be tested without dependence upon nonpermanent attachments or restraints [~~such as chains or guys~~].

(5) For purposes of enforcement, bins shall [~~will~~] be tested by the cabinet in that position which most adversely affects their stability.

Section 4. Test Procedures. The following procedures shall apply to the testing of a refuse bin:

(1) The refuse bin shall be tested by applying forces as described below and in the order indicated:

(a) A horizontal force of seventy (70) pounds [~~(311N)~~] shall be applied to a point and in a direction most likely to cause tipping; and

(b) A vertically downward force of 191 pounds [~~(850N)~~] shall be applied to a point most likely to cause tipping.

(2) These forces shall be applied separately and the bin shall not tip over under the application of either action cited above.

(3) A refuse bin is considered to tip over if [~~when~~] it begins to rotate forward about its forwardmost ground supports.

Section 5. Modification of Unstable Bins. Bins that do not meet the requirements of the test procedures and are[~~, therefore,~~] unstable may be structurally modified so the bin will be in compliance and no longer hazardous. Structural modification (retrofitting) may be accomplished in several ways including: [~~but not limited to the following:~~]

(1) Metallic extensions may be welded to the front of the sloping side, and moving the wheels forward on the extensions.

(2) Placing a permanent counter weight [~~(permanent)~~] on the back of the bin. Structural modification made to stabilize unstable refuse bins shall [~~must~~] be of [~~such~~] durable construction so as to last the useful life of the bin to which applied.

Section 6. Refuse Bins that are not in Compliance with Standards. A [~~Any~~] refuse bin of metal construction produced or distributed, for sale to, or for the personal use, consumption, or enjoyment of consumers, in or around a permanent or temporary household or residence, a school, in recreation or otherwise, which is in commerce or being distributed in commerce on or after the effective date of these standards and which has an actual internal volume one (1) cubic yard or greater and tips over if [~~when~~] tested under conditions which are compatible with Section 3 of this administrative regulation, and using the procedures described in Section 4 of this administrative regulation, shall be deemed a prohibited product and prohibited from distribution in commerce if [~~when~~] found to be not in compliance with these standards.

Section 7. Compliance. Refuse bins which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission shall be considered to be in compliance with these standards.

Section 8. Issuance and Service of Notice of Violations. (1) If [~~When~~] test procedures described in Section 4 of this administrative regulation reveal the bin[~~(s)~~] is not in compliance with the prescribed standards, the cabinet shall notify the owner of the [~~such~~] violations by means of a written notice. The [~~Such~~] notification shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the [~~such~~] violations.

(c) State that an opportunity for appeal from a [~~any~~] notice of inspectional findings shall [~~will~~] be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction.

(d) State that the owner may be represented by counsel during the course of the hearing and may cross-examine witnesses against the owner.

(2) Notices provided for under this administrative regulation shall be deemed to have been properly served if [~~when~~] the written notification of findings has been delivered personally to the owner of the bin or person in charge, or if the [~~when such~~] notice has been sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge. A copy of the [~~such~~] notice shall be filed with the records of the cabinet.

Section 9. Hearings. Should nonconforming bins not be brought into compliance with the applicable standards within the prescribed period of time or an appeal from the findings of violations is requested by the owner or person in charge, a hearing shall be conducted by the cabinet at a time and place designated by it. Based upon the record of the [~~such~~] hearing, the cabinet shall make findings of fact and conclusions of law and a final decision on the appeal. A transcript of the hearing shall not be made unless requested by the interested party [~~assumes the costs thereof~~].

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 26, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Terry M. Wescott

(1) Type and number of entities affected: These amendments will have no effect on the firms distributing refuse bins in commerce, as these changes were made only to comply with KRS Chapter 13A. Also note that, the related federal requirements noted in 16 CFR Part 1301 has been in effect since June 1978.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because there are no permit fees. No additional requirements will be mandated, as applicable refuse bin firms have been required to be in compliance with federal regulations which have been in effect since 1978.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is being amended to comply with rules specified in KRS Chapter 13A. This regulation relates to 16 CFR 1301 "Ban of Unstable Refuse Bins", which has been in effect since June 1978.

2. State compliance standards. Appropriate state compliance and testing requirements originated in federal regulation 16 CFR 1301.

3. Minimum or uniform standards contained in the federal mandate. Federal standards concerning the testing and compliance are identified in CFR Part 1301.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No stricter requirements will be imposed. This regulation relates to and conforms to the requirements of 16 CFR 1301.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional responsibilities or requirements will be imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:010. Application for licensure; fee.

RELATES TO: KRS Chapter 47, Appendix A, Part 1, G, 52, g, paragraph 2, Chapter 333[~~, HB 799, 1990 GA, Part 1, G, 56, g, lines 13-17~~]

STATUTORY AUTHORITY: KRS 194.050, 333.070

NECESSITY AND FUNCTION: KRS Chapter 333 authorizes [~~empowers~~] the Cabinet for Human Resources to license and regulate medical laboratories in Kentucky including applications for licenses and the setting of reasonable license fees. [~~The function of~~] This administrative regulation establishes [~~is to establish~~] application procedures for licensure and [~~to~~] establishes reasonable licensure fees.

Section 1. Licenses. (1) Except as otherwise provided by KRS 333.040 no person shall operate any medical laboratory in this Commonwealth without first obtaining the appropriate license [~~therefor~~].

(2) [~~All~~] Applications for licensure shall be filed with the Cabinet for Human Resources, Office of Inspector General, Division for Licensing and Regulation, Frankfort, Kentucky 40621, and shall be accompanied by a fee of $155.

(3) [~~All~~] Applicants for licenses shall, as a condition [~~precedent~~] to licensure, be in compliance with 902 KAR Chapter 11 [~~the applicable regulations relating to the particular medical laboratory~~].

(4) [~~All~~] Licenses shall expire on December 31 following the date of issuance.

(5) Licenses may be renewed upon payment of eighty (80) dollars.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: This regulation establishes procedures for obtaining a license to operate an independent medical laboratory within the Commonwealth. Changes are restricted to those necessary to bring the regulation into conformity with provisions of KRS Chapter 13A. These amendments are without financial impact.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None. This regulation sets forth procedures for licensure which are not changed by the amendments required for compliance with KRS Chapter 13A.

(a) Direct and indirect costs or savings: The work of laboratory surveyors is not changed by these amendments. These standards have been in place since 1990, and are not changed at this time.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not change the process employed in licensing laboratories. It imposes no new paperwork responsibilities upon the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method is known to be available for the licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: All amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A.

TIERING: Was tiering applied? No. Tiering was not applied because the nominal fees charged primarily cover the costs of processing applications for licensure, which are constant without respect to laboratory size or diversity of testing conducted.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation sets licensing fees and procedures.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:020. Reports and standards of health and safety.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 directs that the Cabinet for Human Resources may require medical laboratory directors to submit reports concerning selected test results and medical laboratory operations. [~~Further,~~] KRS Chapter 333 authorizes [~~empowers~~] the Secretary for [~~the Cabinet for~~] Human Resources to adopt rules and regulations to effectuate the [~~purposes and~~] provisions of KRS Chapter 333, including[~~, but not limited to,~~] standards of construction of medical laboratories, [~~and~~] sanitary conditions within the medical laboratory and its surroundings, and [~~as well as~~] licensure of medical laboratories. [~~The function of~~] This administrative regulation sets [~~is to set~~] out the contents of the required reports, standards of health and safety for medical laboratories, and a provision relating to licensure.

Section 1. Reporting of Information Concerning Operations. The medical laboratory director shall submit to the cabinet [~~such~~] reports of operation as the cabinet may [~~from time to time~~] require. [~~These reports shall include, but not be limited to, the following:~~

~~(1) Any change in laboratory supervisory personnel; such report shall be made within ten (10) days after such change;~~

~~(2) Annual reports of workload data by test, specialty, and subspecialty; such reports may be made either on a calendar or fiscal year basis depending on the accounting procedure used by the medical laboratory.~~]

Section 2. Medical Laboratory Space, Facilities, and Personnel Health. Conditions in the medical laboratory shall be adequate to ensure proper performance of services within the laboratory. [~~Specifically,~~] The following requirements shall [~~must~~] be met:

(1) Workbench space within the laboratory shall [~~must~~] be ample, well-lighted, and situated [~~so as~~] to facilitate the use of necessary sinks, water, gas, suction, and electrical outlets.

(2) Work areas shall [~~must~~] be arranged [~~so as~~] to minimize problems in transportation and communication.

(3) The laboratory shall [~~must~~] be properly ventilated.

(4) Volatile chemicals and inflammable solvents shall [~~must~~] be properly stored in areas where they are unlikely to ignite.

(5) Temperature and humidity within the laboratory shall [~~must~~] be controlled within the limits required for proper performance of tests and operation of instruments affected by these variations.

(6) [~~Voltage levels of electrical sources to which automated equipment is connected must be monitored and recorded;~~

~~(7) Adequate~~] Fire precautions and occupational safety rules shall [~~must~~] be posted and observed [~~in order~~] to avoid physical, chemical, and biological hazards.

(7) [~~(8) Syringes, needles, lancets, or other blood letting devices capable of transmitting infection from one person to another shall not be reused unless they are properly sterilized prior to each use and wrapped in a manner which will ensure that they remain sterile until used.~~] Appropriate sterilization and disinfection techniques shall be used [~~utilized~~] for tests performed on potentially contaminated material. [~~Disposable syringes and needles shall be disposed of in accordance with KRS 217.177(6).~~] Pipettes, Petri dishes, and other disposable items shall be appropriately discarded immediately after use. Each sterilizing cycle shall [~~must~~] contain a recording thermometer or other device indicating the point of proper sterilization. Records of temperature readings shall [~~must~~] be kept at least two (2) years. Proper operation of the autoclave shall be checked monthly with viable spores or appropriate indicator.

[~~(9) All pipette washers must have approved vacuum breakers to prevent back siphoning.~~]

Section 3. Provisions for Acceptance by National Licensing or other Accrediting Bodies. With the exception of 902 KAR 11:030 and Section 1 of this administrative regulation, medical laboratories inspected and certified [~~licensed~~] pursuant to 42 USC 263a, Public Health Service Act [~~Title 42, part 74 (Clinical Laboratories Improvement Act of 1967), medical laboratories inspected and certified pursuant to Title 20, part 405, subpart M (Conditions for Coverage of Services of Independent Laboratories)~~], and medical laboratories which have been inspected and accredited by the commission on inspection and accreditation of the College of American Pathologists or by any other national accreditation body approved [~~for the purpose~~] by the cabinet, shall be deemed to meet all of the requirements for licensure, [~~but only~~] if the standards applied by the [~~such~~] commission or body in determining accreditation of the [~~whether or not to accredit such~~] medical laboratory are equal to, or more stringent than, the provisions of KRS Chapter 333 and the rules and regulations issued pursuant to KRS Chapter 333, and [~~only if~~] there is adequate provision for assuring the [~~such~~] standards continue to be met by the [~~such~~] laboratory.

Section 4. Compliance with State, Federal, and Local Laws. All medical laboratories shall comply with any other applicable state, federal, and local laws and regulations.

RICE C. LEACH, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: This regulation establishes standards for health and safety practices employed in medical laboratories. Additional changes are made, as necessary to bring the regulation into conformity with provisions of KRS Chapter 13A. All of these amendments are without financial impact.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None. The work of laboratory surveyors is not changed by these amendments. Regulations that have been superseded due to changes in technology or are no longer relevant have been deleted.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not change the documentation required of laboratory surveyors in inspecting laboratories. It imposes no paperwork responsibilities upon the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No appropriate alternative method is available for establishing the conditions for licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The majority of amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A. Technical amendments are proposed based upon changes in technology that have occurred since the introduction of these regulations in 1977.

TIERING: Was tiering applied? No. Tiering was not applied because the health and safety measures defined are appropriate to the complexity of testing performed, not the size or volume of testing within a laboratory.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation establishes minimum standards for licensure of any independent medical laboratory.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:030. Personnel standards.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 authorizes [~~empowers~~] the Cabinet for Human Resources to license and regulate medical laboratories in Kentucky, including[~~, but not limited to,~~] setting qualifications for medical laboratory personnel. [~~The function of~~] This administrative regulation establishes [~~is to establish~~] personnel standards for medical laboratory directors, supervisors, technologists, and technicians.

Section 1. Medical Laboratory Director. (1) A medical laboratory director shall, in addition to the responsibilities specified in KRS Chapter 333, be responsible for the following:

(a) [~~The~~] Technical and scientific operation of the laboratory;

(b) [~~The~~] Performance of tests made in the laboratory;

(c) [~~The~~] Reporting of findings of laboratory tests; and

(d) [~~The~~] Employment of qualified laboratory personnel and their in-service training.

(2) The director may serve the laboratory on a full-time or regular part-time basis.

(a) A director may not serve more than three (3) medical laboratories on a regular part-time basis, unless the director [~~he or she~~] provides for an associate in each additional laboratory, qualified according to the standards [~~set forth~~] in subsection (4) of this section, to serve as assistant director in each laboratory.

(b) An assistant director [~~so designated~~] shall not serve more than three (3) laboratories.

(3) Commensurate with the laboratory workload, the director shall spend [~~an~~] adequate [~~amount of~~] time in the laboratory to effectively direct and supervise its technical operation. [~~In addition,~~] The director shall be [~~readily~~] available for personal or telephone consultation. If [~~In the event that~~] the director is to be continuously absent from the laboratory for more than one (1) month, the director shall [~~he or she must~~] make arrangements for a qualified substitute director.

(4) [~~In order~~] To qualify as a medical laboratory director, a person shall [~~must~~] meet one (1) of the following requirements:

(a) [~~He or she~~] Is a physician certified in anatomical [~~and/~~]or clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology, or possesses qualifications [~~which are~~] equivalent to those required for the [~~such~~] certification.

(b) [~~He or she~~] Is a physician certified by the American Board of Pathology or the American Osteopathic Board of Pathology in at least one (1) of the laboratory specialties.

(c) [~~He or she~~] Is a physician certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or any other national accrediting board[~~s~~] in one (1) of the laboratory specialties.

(d) [~~He or she~~] Is a physician certified by the American Society of Cytology to practice cytopathology or possesses qualifications which are equivalent to those required for [~~such~~] certification.

(e) [~~He or she~~] Is a physician who, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of experience in a [~~an approved~~] medical laboratory approved by the cabinet.

(f) [~~He or she~~] Holds an earned doctoral degree from an accredited institution with a chemical, physical, or biological science as a major subject; and

1. Is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or any other national accrediting board acceptable to the cabinet in one (1) of the laboratory specialties; or

2. Subsequent to graduation [~~has~~] had [~~at least~~] two (2) years' full-time experience in one (1) of the laboratory specialties.

(5) A dentist certified by the American Board of Oral Pathology or possessing qualifications [~~which are~~] equivalent to those required for certification may serve as director of a medical laboratory specializing in the area of oral pathology only.

(6) [~~In the event that~~] An individual [~~was~~] responsible for the direction of a medical laboratory for twelve (12) months between January 1, 1968, and May 4, 1977, [~~the effective date of this regulation, he or she~~] may continue to serve as a medical laboratory director if one (1) of the following requirements is met:

(a) [~~He or she~~] Holds a master's degree from an accredited institution with a chemical, physical, or biological science as a major subject and, subsequent to graduation, [~~has~~] had [~~at least~~] four (4) years of pertinent full-time laboratory experience. [~~; or~~]

(b) [~~He or she~~] Holds a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject, and subsequent to graduation, [~~has~~] had [~~at least~~] six (6) years of pertinent full-time medical laboratory experience. [~~; or~~]

(c) [~~He or she~~] Has achieved a satisfactory grade through an examination approved by the cabinet.

Section 2. Medical Laboratory Supervisors. (1) [~~In~~] Each medical laboratory [~~there~~] shall have [~~be~~] a general supervisor and a technical supervisor. A general supervisor may [~~also~~] be a technical supervisor in those specialties in which requirements of competency are met as [~~otherwise~~] provided in 902 KAR Chapter 11 [~~the cabinet's regulations relating to medical laboratories~~].

(2) The general supervisor shall [~~must~~] be present on the laboratory premises during all hours in which tests are being performed.

(3) The technical supervisor shall spend [~~an~~] adequate [~~amount of~~] time in the laboratory to supervise the technical performance of the staff in the specialty and shall be [~~readily~~] available for personal or telephone consultation.

(4) Emergency procedures [~~which must be~~] implemented outside [~~of~~] regularly scheduled hours of duty may [~~can~~] proceed without the general supervisor being on the premises if [~~provided that~~] the technologist performing the tests is qualified to do so. [~~In such instances,~~] The supervisor who is responsible for the result of the work shall [~~must~~] review the tests [~~them~~] during the next duty period, and a record shall [~~must~~] be maintained reflecting the actual review.

(5) [~~In order~~] To qualify as a general supervisor, a person shall [~~must~~] meet one (1) of the following requirements:

(a) [~~He or she~~] Is a physician, or has earned a doctoral degree from an accredited institution with a major in one (1) of the chemical, physical, or biological sciences and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of experience in one (1) of the laboratory specialties in a [~~an approved~~] medical laboratory approved by the cabinet.

(b) [~~He or she~~] Holds a master's degree from an accredited institution with a major in one (1) of the chemical, physical, or biological sciences and, subsequent to graduation, [~~has~~] had [~~at least~~] three (3) years of pertinent full-time laboratory experience of which [~~not less than~~] two (2) years have been spent working in the designated laboratory specialty in a [~~an approved~~] medical laboratory approved by the cabinet.

(c) [~~He or she~~] Is qualified as a medical laboratory technologist pursuant to [~~the provisions of~~] Section 3 of this administrative regulation and, subsequent to the date of qualifying as a medical laboratory technologist, [~~has~~] had [~~at least~~] four (4) years of pertinent full-time laboratory experience of which [~~not less than~~] two (2) years have been spent working on the designated laboratory specialty in a [~~an approved~~] medical laboratory approved by the cabinet.

(6) [~~In order~~] To qualify as a technical supervisor, the [~~such~~] person shall meet competency [~~the~~] requirements [~~of competency as otherwise~~] provided in 902 KAR Chapter 11 [~~the cabinet's regulations relating to medical laboratories~~].

(7) [~~In order~~] To serve as general supervisor of medical laboratory personnel specializing in the area of diagnostic cytology, a person shall [~~must~~] qualify as a cytotechnologist pursuant to Section 3 of this administrative regulation and, subsequent to the qualification, [~~such qualifications has~~] had four (4) years of full-time experience as a cytotechnologist in a laboratory directed or supervised by a pathologist or other physician recognized as a specialist in diagnostic cytology within the preceding ten (10) years.

(8) A person not meeting the training and experience requirements of subsection (5)(a),(b), and (c) of this section may [~~nonetheless~~] qualify as a medical laboratory general supervisor if the person:

(a) [~~He or she~~] Was performing the duties of a medical laboratory general supervisor anytime between January 1, 1968, and May 4, 1977 [~~the effective date of these regulations~~]; and

(b) [~~He or she~~] Has [~~had at least~~] fifteen (15) years of pertinent full-time medical laboratory experience. [~~For purposes of this subsection,~~] A minimum of thirty (30) semester hours of credit from an approved school of medical technology or toward a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject shall be considered equivalent to two (2) years of experience. Additional education shall be equated to the rate of fifteen (15) hours of credit for one (1) year of experience.

(9) [~~In the event~~] An individual [~~has been~~] serving as a [~~in the capacity of~~] medical laboratory supervisor in Kentucky for a period of [~~not less than~~] one (1) year prior to May 4, 1977, [~~the effective date of this regulation, he or she~~] may continue to supervise the [~~such~~] laboratory unless otherwise exempted in [~~notwithstanding the requirements of~~] subsections (5), (6), (7), and (8) of this section. [~~; provided, however, that~~] The cabinet may require (in the interest of the health, safety, and welfare of the people of this state), as a condition to [~~precedent to the~~] issuance of an original or renewal license, the individual satisfactorily [~~hereunder that such individuals~~] demonstrate the [~~their~~] ability [~~satisfactorily~~] to perform medical laboratory examinations and [~~to~~] supervise a medical laboratory.

Section 3. Medical Laboratory Technologists and Cytotechnologists. (1) Medical laboratory technologists and cytotechnologists shall be in sufficient number to adequately supervise the work of technicians or trainees.

(2) An individual qualifying as a medical laboratory technologist shall:

(a) Perform tests requiring the exercise of independent judgment and responsibility with minimal supervision by the director or supervisors only in those specialties or subspecialties in which the technologists are qualified by education, training, and experience.

(b) Perform tests only under the direct supervision of the laboratory supervisor or qualified technologist in those specialties in which the medical laboratory technologist is not qualified by education, training, or experience.

(3) [~~In order~~] To qualify as a medical laboratory technologist, a person shall [~~must~~] meet one (1) of the following requirements:

(a) [~~He or she~~] Has earned a bachelor's degree in medical technology from an accredited university or college. [~~; or~~]

(b) [~~He or she~~] Has successfully completed three (3) years of academic study (a minimum of ninety (90) semester hours or equivalent) in an accredited college or university which met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by the cabinet [~~appropriate state agency~~] and has successfully completed a course of training of [~~at least~~] twelve (12) months in [~~such~~] a school of medical technology. [~~; or~~]

(c) [~~He or she~~] Has earned a bachelor's degree in one (1) of the chemical, physical, or biological sciences and[~~, in addition,~~] has [~~at least~~] one (1) year of pertinent full-time laboratory experience [~~and~~/]or training in the specialty or subspecialty in which the individual

performs. [; or]

(d) [He or she] Has successfully completed three (3) years (a minimum of ninety (90) semester hours or equivalent) in an accredited college or university with the following distribution of courses:

1. For those whose training was completed prior to September 15, 1963, the course work shall [must] include [at least] twenty-four (24) semester hours in chemistry and biology courses of which [at least] six (6) semester hours were in inorganic chemistry, and [at least] three (3) semester hours were in other chemistry courses, and [at least] twelve (12) semester hours were in biology courses pertinent to the medical sciences; or

2. For those whose training was completed after September 14, 1963, the course work shall [must] include [at least] sixteen (16) semester hours in chemistry courses which included [at least] six (6) semester hours in inorganic chemistry [and which are] acceptable toward a major in chemistry, [; and] sixteen (16) semester hours in biology courses which are pertinent to the medical sciences and are acceptable toward a major in biology, and three (3) semester hours of mathematics; and

3. [He or she] Has experience [and/]or training covering several fields of medical laboratory work of [at least] one (1) year and of a [such] quality [as] to provide [him with] education and training in medical technology equivalent to that described in paragraphs (a) and (b) of this subsection.

(e) A person not meeting the training and experience requirements defined in paragraphs (a), (b), (c), or (d) of this subsection may [nonetheless] qualify as a medical laboratory technologist if the person:

1. [He or she] Was performing the duties of a medical laboratory technologist any time between January 1, 1968, and May 4, 1977; [the effective date of these regulations;] and

2. [He or she has] Had [at least] ten (10) years of pertinent medical laboratory experience prior to May 4, 1977. [the effective date of these regulations. For purposes of this subsection,] A minimum of thirty (30) semester hours of credit from an approved school of medical technology or toward a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject shall be considered equivalent to two (2) years of experience. Additional education shall be equated to the rate of fifteen (15) hours of credit for one (1) year of experience.

(f) [He or she] Has achieved a satisfactory grade in a proficiency examination approved by the cabinet. [However,] After December 31, 1978, initial qualification as a technologist shall [must] be in accordance with the requirements of paragraphs (a), (b), (c), or (d) of this subsection.

(4) [In order] To qualify as a medical laboratory cytotechnologist, a person shall [must] meet one (1) of the following requirements:

(a) Have successfully completed two (2) years in an accredited college or university with [at least] twelve (12) semester hours in science, eight (8) hours of which are in biology; and

1. Have twelve (12) months of training in a school of cytotechnology accredited by an accrediting agency approved by the cabinet [appropriate state agency]; or

2. [He or she] Has received six (6) months of formal training in a school of cytotechnology accredited by an accrediting agency approved by the cabinet [appropriate state agency] and six (6) months of full-time experience in cytotechnology in a laboratory acceptable to the pathologist who directed the [such] formal six (6) months of training. [; or]

(b) [He or she] Has, prior to May 4, 1977 [the effective date of these regulations]:

1. Graduated from high school; [and]

2. Completed six (6) months of training in cytotechnology in a laboratory directed by a pathologist or other physician recognized as a specialist in cytotechnology; and

3. Completed two (2) years of full-time supervised experience in cytotechnology.

(c) [He or she] Has achieved a satisfactory grade in a proficiency examination approved by the cabinet. [However,] After December 31, 1978, initial qualification as a cytotechnologist shall [must] be in accordance with the requirements of paragraphs (a) or (b) of this subsection.

(5) An individual qualifying as a cytotechnologist solely under subsection (4) of this section may supervise technicians and trainees only in the specialty of cytology.

(6) [In the event] An individual [has been] serving as [in the capacity of] a laboratory technologist or cytotechnologist in Kentucky for a period of [not less than] one (1) year prior to May 4, 1977, [the effective date of these regulations, he or she] may continue to serve the laboratory in a [such] capacity unless otherwise exempted in [notwithstanding the requirements of] subsections (3) and (4) of this section. [, provided, however, that] The cabinet may require (in the interest of the health, safety, and welfare of the people of this state), as a condition to [precedent to the] issuance of an original or renewal license, the individual satisfactorily [hereunder, that such individuals] demonstrate the [their] ability [satisfactorily] to perform medical laboratory functions under supervision.

Section 4. Medical Laboratory Technicians and Trainees. (1) Medical laboratory technicians shall:

(a) Perform only [those] medical laboratory procedures which require a degree of skill commensurate with their education, training, and technical abilities, and which involve limited exercise of independent judgment.

(b) Perform procedures only in the presence of a qualified medical laboratory technologist, supervisor, or director.

(2) A medical laboratory technician trainee shall perform only repetitive procedures which require a minimal exercise of independent judgment. These [He or she may perform such] procedures shall be performed only under the personal and direct supervision of a qualified supervisor or technologist.

(3) [In order] To qualify as a medical laboratory technician, a person shall [must] meet one (1) of the following requirements:

(a) [He or she] Has successfully completed sixty (60) semester hours of academic credit, including chemistry and biology, and [as well as] a structured curriculum in medical laboratory techniques at an accredited institution, or has an associate degree based on a course of study including those subjects from an accredited institution. [; or]

(b) [He or she] Is a high school graduate or equivalent [thereof] and has completed [at least] one (1) year in a technician training program in a school accredited by an accrediting agency approved by the cabinet. [appropriate state agency; or]

(c) [He or she] Is a high school graduate or equivalent [thereof] and has [had] two (2) years of pertinent full-time laboratory experience as a technician trainee in a [an approved] medical laboratory approved by the cabinet. [; or]

(d) [He or she] Is a high school graduate or equivalent, [thereof and] has successfully completed an official military medical laboratory procedures course of [at least] fifty (50) weeks [duration] and has held the military enlisted occupational specialty of Medical Laboratory Specialist (Laboratory Technician). [; or]

(e) A person not meeting the training and experience requirements defined in paragraphs (a), (b), (c), or (d) of this subsection may [nonetheless] qualify as a medical laboratory technician if the person:

1. [He or she] Was performing the duties of a medical laboratory technician any time between January 1, 1968, and May 4, 1977 [the effective date of these regulations]; and

2. [He or she has] Had [at least] five (5) years of pertinent medical laboratory experience prior to May 4, 1977 [the effective date of these regulations].

(f) [In the event that] An individual [has been] serving as [in the capacity of] a laboratory technician in Kentucky for a period of [not less than] one (1) year prior to May 4, 1977, [the effective date of these regulations he] may continue to serve the laboratory unless

otherwise exempted in [~~notwithstanding the requirements of~~] paragraphs (a), (b), (c), (d), and (e) of this subsection. [~~; provided, however, that~~] The cabinet may require (in the interest of the health, safety, and welfare of the people of the state) as a condition [~~precedent~~] to the issuance of an original or renewal license, the individual satisfactorily [~~hereunder, that such individuals~~] demonstrate the [~~their~~] ability [~~satisfactorily~~] to perform medical laboratory functions under supervision. [~~; or~~]

(g) [~~He or she~~] Has achieved a satisfactory grade in a proficiency examination approved by the cabinet. [~~However,~~] After December 31, 1978, initial certification as a technician shall [~~must~~] be in accordance with paragraphs (a), (b), (c), or (d) of this subsection.

Section 5. Personnel Policies. Each laboratory shall create and maintain written personnel policies, practices, and procedures that [~~adequately~~] support sound laboratory practice. Work assignments shall be consistent with qualifications. [~~In addition,~~] The laboratory shall maintain written employment records which include:

(1) A resume of each employee's initial and continued training, experience, duties, and date or dates of employment. [~~; and~~]

(2) Evidence of adequate health supervision of employees, including results of preemployment physical examinations, including chest X-rays, immunization records, and records of all illnesses and accidents occurring on duty.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: This regulation establishes standards for personnel employed in medical laboratories. Changes are restricted to those necessary to bring the regulation into conformity with provisions of KRS Chapter 13A. These amendments are, therefore, without financial impact.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None. This regulation sets forth personnel standards for licensed laboratories.

(a) Direct and indirect costs or savings: None. The work of laboratory surveyors is not changed by these amendments. These standards have been in place since 1977, and are not changed at this time.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not change the documentation required of laboratory surveyors in inspecting laboratories. It imposes no paperwork responsibilities upon the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No appropriate alternative method is available for establishing the conditions for licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The majority of amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A. Technical amendments are proposed based upon changes in technology that have occurred since the introduction of these regulations in 1977.

TIERING: Was tiering applied? No. Tiering was not applied because the educational requirements of personnel employed in independent medical laboratories is specified by regulation on the basis of work performed, not size of laboratory in which the testing is done, or volume of tests done.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation establishes minimum personnel standards for any independent medical laboratory seeking licensure.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:035. Proficiency test procedures.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 authorizes [~~empowers~~] the Cabinet for Human Resources to periodically inspect medical laboratories in Kentucky and to withhold the issuance of a license to the medical laboratory until the cabinet [~~shall~~] determines that the laboratory is adequately staffed and equipped to operate in conformity with the requirements of KRS Chapter 333 and the administrative regulations promulgated thereunder. [~~Further,~~] KRS Chapter 333 directs the Secretary for [~~the Cabinet for~~] Human Resources to adopt rules and regulations to effectuate the purposes of KRS Chapter 333 including[~~, but not limited to,~~] the licensure of

medical laboratories, [and] standards of performance in the examination of specimens, and [including] the operation by the cabinet of a medical laboratory evaluation program. [The function of] This administrative regulation describes [is to describe] the proficiency test program which shall be employed by the cabinet to evaluate the work of medical laboratories.

Section 1. Definitions. (1) "Reference laboratory" means a laboratory designated by the cabinet to authenticate the identification, content, or titer of samples and other materials used in proficiency testing.

(2) "Referee laboratory" means a laboratory designated by the cabinet to examine specimens or other materials for proficiency testing using the time schedule allowed for licensed laboratories and under conditions similar to those under which licensed laboratories examine materials.

Section 2. [1.] Proficiency Testing; Procedures, Samples, Test Conditions. [All] Applicants and licensees shall be subject to a proficiency testing program approved by the cabinet, to aid in assessing the competency of laboratory staff and the adequacy and quality of facilities, equipment, reagents, working conditions, and procedures. [Such] Testing may be carried out during on-site inspections by the cabinet or by submittal to laboratories of samples for examination. In conducting [such] testing, the following rules shall apply:

(1) The laboratory shall be tested only in those procedures or specialties of procedures for which a license application, original or renewal, has been filed with the cabinet, or for which the cabinet has issued a license.

(2) Samples shall be examined by regularly assigned personnel using the laboratory's routine methods.

(3) [The] Samples to be tested may be provided prior to, during, or subsequent to inspections.

(4) [The] Time allowed for testing of samples shall be the time required under conditions of normal laboratory operations, as determined by the cabinet.

(5) Laboratory personnel shall enter the date and time of receipt of samples, results of tests, and [such] other information required by [as] the cabinet [may require], on forms provided or required by the cabinet.

[Section 2. Definitions. (1) For purposes of this regulation, the term "reference laboratory" means a laboratory designated by the cabinet to authenticate the identification, content or titer of samples and other materials used or to be used in proficiency testing;

(2) The term "referee laboratory" means a laboratory designated by the cabinet to examine specimens or other materials for purposes of proficiency testing using the same time schedule allowed for licensed laboratories and under conditions similar to those under which licensed laboratories examine materials.]

Section 3. Proficiency Testing; Reference Laboratories and Referee Laboratories. Samples identical to those submitted to the applicant or licensee laboratory shall be submitted to reference or referee laboratories designated by the cabinet.

Section 4. Proficiency Testing; Reporting of Test Scores. (1) If [Where the] laboratory reports reflect a lack of proficiency, the cabinet may recommend corrective measures, consultation, or training in an appropriate laboratory and may, upon written request of the laboratory director, furnish the laboratory with additional samples after corrective measures have been taken.

(2) Results reflecting a lack of proficiency may constitute a basis for denial, revocation, suspension, or limitation of the laboratory license, as provided by KRS 333.190(3).

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: This regulation specifies a mechanism for evaluating the quality of a laboratory's testing outcomes. Changes are restricted to those necessary to bring the regulation into conformity with provisions of KRS Chapter 13A. These amendments are, therefore, without financial impact.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None. This regulation sets forth proficiency testing procedures

(a) Direct and indirect costs or savings: None. The work of laboratory surveyors is not changed by these amendments. These standards have been in place since 1977, and are not changed at this time.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not change the documentation required of laboratory surveyors in inspecting laboratories. It imposes no paperwork responsibilities upon the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No appropriate alternative method is available for establishing the conditions for licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: All amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A.

TIERING: Was tiering applied? No. Tiering was not applied because the quality assurance measures defined are appropriate to the complexity of testing performed, not the size or volume of testing within a laboratory.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation specifies standards for establishing the proficiency of any independent medical laboratory seeking licensure.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:040. Specialty test procedure.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 authorizes [~~empowers~~] the Cabinet for Human Resources to issue licenses to medical laboratories in Kentucky, and directs that [~~such~~] licenses be issued only for the performance of those medical laboratory procedures which the particular laboratory, by virtue of the educational and experience background of its laboratory personnel, is competent to perform. [~~Further,~~] The cabinet is authorized to adopt reasonable rules and regulations to effectuate the purposes and provisions of KRS Chapter 333. [~~The function of~~] This administrative regulation [~~is to~~] establishes standards for determining the specialty of test procedures for which a laboratory may be licensed.

Section 1. Tests Performed. The medical laboratory shall perform only those laboratory procedures and tests that are within the specialties and subspecialties [~~in which~~] the laboratory director or supervisor is qualified. The following standards shall apply:

(1) A laboratory may perform anatomical and clinical laboratory procedures and tests in all specialties if the laboratory director or a supervisor is a physician certified in both anatomical and clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or possesses qualifications [~~which are~~] equivalent to those required for certification.

(2) Unless otherwise exempted in [~~Notwithstanding the provisions of~~] subsection (1) of this section, a laboratory may perform tests in the specialty of:

(a) Microbiology, including the subspecialties of bacteriology, virology, mycology, and parasitology if the director or a supervisor is a physician or holds an earned doctoral or master's degree in microbiology from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of experience in clinical microbiology.

(b) [~~(3) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Serology if the director or a supervisor is a physician or holds an earned doctoral or master's degree in biology, chemistry, immunology, or microbiology from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of experience in serology.

(c) [~~(4) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Hematology, including gross and microscopic examination of the blood, if the director or a supervisor holds a master's or bachelor's degree in biology, immunology, microbiology, chemistry, or medical technology from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of experience in hematology.

(d) [~~(5) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Immunohematology if the director or a supervisor is a physician with [~~at least~~] two (2) years of experience in immunohematology subsequent to graduation.

(e) [~~(6) Notwithstanding the provisions of subsections (1) and (5) of this section, a laboratory may perform tests in the immunohematology subspecialties of ABO grouping and Rh typing, antibody detection, identification and titering if the director or a supervisor holds a master's or bachelor's degree in biology, immunology, microbiology, chemistry, or medical technology from an accredited institution and subsequent to graduation has had at least two (2) years of experience in immunohematology;~~

~~(7) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Clinical chemistry if the director or a supervisor is a physician or holds an earned doctoral or master's degree in chemistry from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of [~~approved~~] experience in clinical chemistry approved by the cabinet.

(f) [~~(8) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Radiobioassay if the director or a supervisor is a physician or holds an earned doctoral, master's, or bachelor's degree in chemistry, physics, biology, or medical technology from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] two (2) years of [~~approved~~] experience in radiobioassay approved by the cabinet.

(g) [~~(9) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Tissue pathology, limited to skin pathology, if the director or a supervisor is a physician certified in dermato-pathology by the American Board of Dermatology or possesses qualifications [~~which are~~] equivalent to those required for certification.

(h) [~~(10) A laboratory may perform tests in the specialty of tissue pathology if the director or a supervisor is a physician who is certified in anatomical pathology by the American Board of Pathology or possesses qualifications which are equivalent to those required for certification;~~

~~(11) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Diagnostic cytology if the director or a supervisor is a physician who is certified by the American Society of Cytology to practice cytopathology or possesses qualifications [~~which are~~] equivalent to those required for certification. [~~Under this provision~~] The laboratory shall be qualified to perform the [~~such~~] tests only on that anatomic site for which the director or supervisor is certified.

(i) [~~(12) Notwithstanding the provisions of subsection (1) of this section, a laboratory may perform tests in the specialty of~~] Oral pathology if the director or supervisor is a dentist or physician who is certified in oral pathology by the American Board of Oral Pathology or possesses qualifications [~~which are~~] equivalent to those required for certification.

(3) Unless otherwise exempted in subsections (1) and (2)(d) of this section, a laboratory may perform tests in the immunohematology subspecialties of ABO grouping and Rh typing, antibody detection, identification, and titering if the director or a supervisor holds a master's or bachelor's degree in biology, immunology, microbiology, chemistry, or medical technology from an accredited institution and, subsequent to graduation, had two (2) years of experience in

immunohematology.

(4) A laboratory may perform tests in the specialty of tissue pathology if the director or a supervisor is a physician who is certified in anatomical pathology by the American Board of Pathology or possesses qualifications equivalent to those required for certification.

Section 2. Special Exceptions. (1) Unless otherwise exempted in [~~Notwithstanding the provisions of~~] Section 1(2)(a), (b), (c), (e), or (f) [~~, (3), (4), (6), (7), and (8)~~] of this administrative regulation, if an individual qualifies as a medical laboratory director by reason of having served as director of a medical laboratory for twelve (12) months between January 1, 1968, and May 4, 1977; [~~the effective date of these regulations and~~] having attained a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject; and, subsequent to graduation, [~~has~~] had [~~at least~~] six (6) years of pertinent full-time medical laboratory experience, [~~:~~

~~(1)~~] the laboratory may perform tests in the specialty of:

(a) Microbiology if the director holds a bachelor's degree in a biological science and, subsequent to graduation, [~~has~~] had [~~at least~~] four (4) years of experience in microbiology.

(b) [~~(2) The laboratory may perform tests in the specialty of~~] Hematology if the director holds a bachelor's degree in biology, immunology, or microbiology from an accredited institution and, subsequent to graduation, [~~has~~] had [~~at least~~] four (4) years of experience in hematology.

(c) [~~(3) The laboratory may perform tests in the specialty of~~] Serology if the director holds a bachelor's degree in biology, chemistry, immunology, or microbiology and, subsequent to graduation, [~~has~~] had [~~at least~~] four (4) years of experience in serology.

(d) [~~(4) The laboratory may perform tests in the specialty of~~] Radiobioassay if the director, subsequent to graduation, [~~has~~] had [~~at least~~] one (1) year of experience in radiobioassay.

(e) [~~(5) The laboratory may perform tests in the subspecialties of blood grouping and Rh typing, antibody detection, identification, and titering if the director holds a bachelor's degree in biology, immunology, or microbiology from an accredited institution and, subsequent to graduation has had at least four (4) years of experience in immunohematology;~~

~~(6) The laboratory may perform tests in the specialty of~~] Clinical chemistry if the director holds a bachelor's degree in a chemical science or its equivalent and, subsequent to graduation, [~~has~~] had [~~at least~~] four (4) years of experience in clinical chemistry.

(2) The laboratory may perform tests in the subspecialties of blood grouping and Rh typing, antibody detection, identification, and titering if the director holds a bachelor's degree in biology, immunology or microbiology from an accredited institution and, subsequent to graduation, had four (4) years of experience in immunohematology.

(3) [~~(7)~~] The laboratory may perform tests in any of the specialties or subspecialties mentioned in subsections (1) and (2) [~~through (6)~~] of this section, if the director holds a bachelor's degree in medical technology and, subsequent to graduation, [~~has~~] had [~~at least~~] the designated years of specialized experience.

Section 3. Special Qualification by Examination. Unless otherwise exempted in [~~Notwithstanding the provisions of~~] Sections 1 and 2 of this administrative regulation, if an individual qualifies as a medical laboratory director by reason of having served as director of a medical laboratory for twelve (12) months between January 1, 1968, and May 4, 1977, [~~the effective date of these regulations~~] and has achieved a satisfactory grade through an examination approved by the cabinet, the laboratory may perform tests in the laboratory specialties the [~~in which such~~] director achieved a satisfactory grade in an examination approved by the cabinet.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: This regulation specifies minimum qualifications for management personnel when a laboratory performs testing in specialty areas. Although the regulation has been reformatted and reworded for conformity with the provisions of KRS Chapter 13A, the technical content has not been changed. These amendments are, therefore, without financial impact.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None. The work of laboratory surveyors is not changed by these amendments. These personnel standards have been in place since 1977, and are not changed at this time.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation imposes no paperwork responsibilities upon the promulgating body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No appropriate alternative method is available for establishing the conditions for licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: All amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A.

TIERING: Was tiering applied? No. Tiering was not applied because educational requirements of personnel employed in independent medical laboratories is specified by regulation on the basis of work performed, not laboratory's size or testing volume.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

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

administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation defines minimum personnel standards required of any independent medical laboratory seeking licensure to offer services within specific specialties and subspecialties of testing.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:045. Test and specimen records.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 requires medical laboratories in Kentucky to keep records involving medical laboratory services and copies of reports of laboratory tests for the period of time and in a manner prescribed by administrative regulation. [~~Further,~~] KRS Chapter 333 authorizes [~~empowers~~] the Secretary for [~~the Cabinet for~~] Human Resources to adopt [~~such~~] rules and regulations [~~as are necessary~~] to effectuate the purposes and provisions of the chapter. [~~The function of~~] This administrative regulation describes [~~is to describe~~] the contents of test and specimen records [~~which are~~] to be maintained by the medical laboratories.

Section 1. Records of Observations. Records of observations shall be made by the medical laboratory concurrently with the performance of each step in the examination of specimens.

(1) The records shall reflect the actual results of all control procedures.

(2) Pursuant to KRS 333.180(1), all pertinent laboratory records shall be made available to [~~such~~] inspection, examination, and copying as the cabinet may direct.

(3) All records shall be retained for a period of at least two (2) years after the date of submittal of the report, except as otherwise prescribed by law.

Section 2. Specimen Records. Daily accession records shall be maintained containing the following information:

(1) [~~The~~] Laboratory number of the specimen or other means of identification;

(2) [~~The~~] Name and other identification of the person from whom the specimen was taken, if available;

(3) [~~The~~] Name of the licensed physician or other person or laboratory submitting [~~who or which submitted~~] the specimen;

(4) [~~The~~] Date the specimen was collected by the physician or other authorized person, if available;

(5) [~~The~~] Date the specimen was received in the laboratory;

(6) [~~The~~] Condition of unsatisfactory specimens and packages if [~~when~~] received (e.g., broken, leaked, hemolyzed, or turbid);

(7) [~~The~~] Type of test performed; [~~and~~]

(8) [~~The~~] Result of the laboratory test; and

(9) [~~the~~] Date the test was completed.

RICE C. LEACH, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: All amendments proposed are required to bring this regulation into conformity with KRS Chapter 13A. No added costs are associated with this regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: This regulation specifies recordkeeping requirements for the testing process within licensed medical laboratories. They have been in place for more than 15 years, and are unchanged by this amendment.

(2) Effects on the promulgated administrative body: None. This regulation establishes recordkeeping standards for licensed medical laboratories.

(a) Direct and indirect costs or savings: None.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not change the documentation required of laboratory surveyors in inspecting laboratories. It imposes no paperwork responsibilities upon the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No appropriate alternative method is known to be available for establishing conditions for licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: All amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A.

TIERING: Was tiering applied? No. Tiering was not applied because the quality assurance measures defined are appropriate to the complexity of testing performed, not a laboratory's size or volume of testing.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation defines minimum recordkeeping standards required for licensed independent medical laboratories.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Laboratory Services
(Proposed Amendment)

902 KAR 11:050. Equipment, methods, and samples.

RELATES TO: KRS Chapter 333

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS Chapter 333 directs that all medical laboratories in Kentucky shall establish a quality control program acceptable to the Cabinet for Human Resources, and authorizes [empowers] the cabinet to adopt reasonable rules and regulations to effectuate the purposes of KRS Chapter 333, including[, but not limited to,] standards of performance in the examination of specimens. [The function of] This administrative regulation is to ensure accuracy of test results by control of medical laboratory equipment, methods, and samples.

Section 1. Quality Control; General Practices. Each medical laboratory shall establish a quality control program covering all types of analyses performed by the laboratory for verification and assessment of accuracy, measurement of precision, and detection of error. The program shall provide for the following:

(1) Preventive maintenance, periodic inspection, and testing for proper operation of equipment and instruments as may be appropriate; validation of methods; evaluation of reagents [and volumetric equipment]; surveillance of results; and remedial action to be taken in response to detected defects.

(2) Adequacy of facilities, equipment, instruments, and methods for performance of the procedures or categories of procedures for which a license application is filed or granted; proper lighting for accuracy and precision; [convenient location of essential utilities;] monitoring of temperature-controlled spaces and equipment, including water baths, incubators, sterilizers, and refrigerators, to ensure proper performance; evaluation of analytical measuring devices, such as photometers and radioactivity counting equipment, with respect to all critical operating characteristics.

(3) Labeling of all reagents and solutions to indicate identity and, if [when] significant, titer, strength or concentration, recommended storage requirements, preparation or expiration date, and other pertinent information; assure that material of substandard reactivity or deteriorated materials are not used.

(4) The availability at all times, in the immediate bench area in which staff is engaged in examining specimens and performing related procedure within a category (e.g., clinical chemistry, hematology, and pathology) of current laboratory manuals or other complete written descriptions and instructions relating to:

(a) The analytical methods to be used by the staff, properly designated and dated to reflect the most recent supervisory reviews;

(b) Reagents;

(c) Control and calibration procedures; and

(d) Pertinent literature references. Textbooks may be used as supplements to the written descriptions but may not be used in lieu thereof.

(5) Written approval by the director or supervisor of all changes in laboratory procedures.

(6) Maintenance and availability to laboratory personnel and to the cabinet of records, reflecting dates and, if [where] appropriate, the nature of inspection, validation, remedial action, monitoring, evaluation, and changes and dates of changes in laboratory procedures. [; and]

(7) Solicitation designed to provide for the collection, preservation, and transportation of specimens sufficiently stable to provide accurate and precise test results suitable for clinical interpretation.

Section 2. Quality Control for Particular Specialties and Subspecialties. In addition to the quality control provisions required under Section 1 of this administrative regulation, each medical laboratory shall provide for additional controls which pertain to the particular specialties and subspecialties in which the laboratory is involved. In establishing the [such] controls, the following rules shall apply:

(1) If the laboratory performs tests in the specialty of microbiology, chemical and biological solutions, reagents, and antisera shall be tested and inspected each day of use for reactivity and deterioration. [In addition:]

(a) If the laboratory performs tests in the subspecialties of bacteriology and mycology, staining materials shall be tested for intended reactivity by [concurrent] application to smears of microorganisms with predictable staining characteristics; and each batch of medium shall be tested before, or concurrently with, use with selected organisms to confirm required growth, characteristics, selectivity, enrichment, and biochemical response.

(b) If the laboratory performs tests in the subspecialty of parasitology, a reference collection of slides, photographs, or gross specimens of identified parasites shall be available and used in the laboratory for appropriate comparison with diagnostic specimens; and a calibrated ocular micrometer shall be used for determining the size of ova and parasites, if size is a critical factor.

(c) If the laboratory performs tests in the subspecialty of virology, systems for the isolation of viruses and reagents for the identification of viruses shall be available to cover the entire range of viruses which are etiologically related to clinical diseases for which services are offered; records shall be maintained which reflect the systems used and the reactions observed; in tests for the identification of viruses, controls shall be employed which [will] identify erroneous results; and if sero-diagnostic tests for virus diseases are performed, requirements for quality control as specified for serology shall apply.

(2) If the laboratory performs tests in the specialty of serology, the following controls shall be established:

(a) Serologic tests on unknown specimens shall be run concurrently with a positive control serum of known titer or controls of graded reactivity plus a negative control in order to detect variations in reactivity levels.

(b) Controls for all test components (antigens, complement, erythrocyte indicator systems, etc.) shall be employed to ensure reactivity and uniform dosage.

(c) Test results shall not be reported unless the predetermined reactivity pattern of the controls is obtained.

(d) [Each new lot of reagent shall be tested concurrently with one of known acceptable reactivity before the new reagent is placed in routine use; and

(e)] Equipment, glassware, reagents, controls, and techniques for tests for syphilis shall conform to those recommended in the "Manual of Tests for Syphilis", American Public Health Association, 1990

[1969" U.S. Public Health Service Publication No. 411, January 1969], incorporated by reference, or to any subsequent revisions [thereto]. A copy of the "Manual of Tests for Syphilis" may be inspected or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.

(3) If the laboratory performs tests in the specialty of clinical chemistry:

(a) Each instrument or other device shall be recalibrated or rechecked at least once on each day of use. Records which document the routine precision of each method, automated or manual, and its recalibration schedule shall be maintained and [be] available to laboratory personnel and the cabinet; at least one (1) standard and one (1) reference sample (control) shall be included [with] each day [run] of testing unknown specimens [where such standards and reference samples are available]; and control limits for standards and reference samples shall be recorded and displayed and shall include the course of action to be instituted if [when] the results are outside the acceptable limits.

(b) Screening or qualitative chemical urinalysis shall be checked daily by use of suitable reference samples.

(4) If the laboratory performs tests in the specialty of immunohematology:

(a) ABO grouping shall be performed by testing unknown red cells with anti-A and anti-B grouping serums licensed under Part 73, Title 42, Code of Federal Regulations, or possessing equivalent potency, using the technique for which the serum is specifically designed to be effective; for confirmation of ABO grouping the unknown serum shall be tested with known A1 and B red cells.

(b) The Rho(D) type shall be determined by testing unknown red cells with anti-Rho (anti-D) typing serum licensed under 42 CFR Part 73, or possessing equivalent potency using the technique for which the serum is specifically designed to be effective; anti-Rho' (CD), anti-Rho" (DE) and anti-Rhorh'rh" (CDE) serums licensed pursuant to 42 CFR Part 73, or possessing an equivalent potency, may be used for typing donor blood; all Rho negative donor and patient cells shall be tested for the Rho variant (Du); a control system of patient's cells suspended in his own serum or in albumin shall be employed if [when] the test is performed in a protein medium.

(c) The potency and reliability of reagents (antisera, known test cells, and antiglobulin - Coombs serum) [which are] used for ABO grouping, Rh typing, antibody detection, and compatibility determinations shall [must] be tested for reactivity on each day of use and if [when] a new lot of reagents is [first] used.

(5) If the laboratory performs tests in the specialty of hematology, instruments and other devices used in hematological examination of specimens shall be recalibrated, [or] retested, or reinspected, as may be appropriate, each day of use; each procedure [for which standards and controls are available] shall be rechecked each day of use with two (2) levels of [standards or] controls [covering the entire range of expected values]; tests such as the one (1) stage prothrombin time test shall be run in duplicate unless the laboratory can demonstrate that low frequency of random error or high precision makes the [such] testing unnecessary; [reference materials, such as hemoglobin pools, and stabilized cells, shall be tested at least once each day of use to insure accuracy of results;] standard deviation, coefficient of variation, or other statistical estimates of precision shall be determined by random replicate testing of specimens; and the accuracy and precision of blood cell counts, [and] hematocrit, and hemoglobin measurements shall be tested each day of use.

(6) If the laboratory performs tests in the specialties of exfoliative cytology, histopathology, or oral pathology, the following controls shall be established:

(a) If the laboratory performs tests in the specialty of exfoliative cytology, the laboratory director or supervisor qualified in cytology shall rescreen for proper staining and correct interpretation at least a ten (10) percent random sample of gynecological smears which have been interpreted to be in one (1) of the benign categories by personnel not possessing director or supervisor qualifications; all gynecological smears interpreted to be in the "suspicious" or positive categories by screeners shall be confirmed by the laboratory director or qualified supervisor and the report shall be signed by a physician qualified in pathology or cytology; all nongynecological cytological preparations, positive or negative, shall be reviewed by a director or supervisor qualified in cytology; nonmanual methods shall provide quality control similar to that [provided] in other nonmanual laboratory procedures; and all smears shall be retained for not less than five (5) [two (2)] years from date of examination.

(b) If the laboratory performs tests in the specialties of histopathology and oral pathology, all special stains shall be controlled for intended reactivity by use of positive slides; stained slides shall be retained for not less than two (2) years from date of examination, and blocks shall be retained for not less than one (1) year from the [such] date of examination; and remnants of tissue specimens shall be retained in a fixative solution until those portions submitted for microscopy have been examined and a diagnosis made by a pathologist.

(7) If the laboratory performs tests in the specialty of radiobioassay, the counting equipment shall be checked for stability at least once each day of use, with radioactive standards or reference sources; reference samples with known activity and within expected levels of normal samples shall be processed in replicate quarterly; for each method, records which document the routine precision and the recalibration schedule shall be maintained and be available to the staff and the cabinet.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Thomas

(1) Type and number of entities affected: Approximately 120.

(a) Direct and indirect costs or savings to those affected: Amendments to this regulation have no financial impact upon the regulated community.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Recordkeeping required under this regulation is extensive, but has not been increased in these amendments.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: The Division of Licensing and Regulation is unaffected by the changes to this regulation.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Unchanged from amended regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method is available for the licensure, by the Commonwealth, of independent medical laboratories.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The majority of amendments proposed are made to bring the regulation into conformity with the provisions of KRS Chapter 13A. Minor technical amendments are proposed based upon changes in technology that have occurred since the introduction of these regulations in 1977.

TIERING: Was tiering applied? No. Tiering was not applied because the quality assurance measures defined are appropriate to the complexity of testing performed, not the size or volume of testing within a laboratory.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Only those agencies of local governments choosing to seek licensure as independent medical laboratories will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only relates to clinical laboratories operated by local governments, generally within local health departments, which seek licensure as independent medical laboratories.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation defines minimum quality control standards for licensed independent medical laboratories.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development
(Proposed Amendment)

902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194.050, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt [~~rules and~~] administrative regulations relating to emergency medical technicians. [~~The function of~~] This administrative regulation [~~is to~~] establishes procedures for taking disciplinary action against an applicant for certification or certified emergency medical technician (EMT), EMT-first responder, EMT-first responder instructor, EMT [~~and emergency medical technician~~]-instructor, or EMT-instructor trainer.

Section 1. Denial, Revocation, [~~and~~] Suspension, and Restriction of Certificates. The cabinet may deny, revoke, [~~or~~] suspend, or restrict the certificate of a person who:

(1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(2) Uses drugs or controlled substances to the extent it may effect his ability to perform the duties of an EMT, or becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) Uses alcohol to the extent that it may affect his ability to perform the duties of an EMT or becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);

(4) Has or develops a [~~such~~] physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public; [~~or~~]

(5) Fails to:

(a) Follow the appropriate standards of care in the management of a patient;

(b) Administer medicine or treatment in a responsible manner in accordance with:

1. His level of certification;

2. Orders of a physician; or

3. Locally approved medical protocols;

(c) Maintain patient confidentiality;

(d) Meet the requirements for certification or recertification pursuant to:

1. 902 KAR 13:050 for an EMT, EMT-instructor or EMT-instructor trainer; or

2. 902 KAR 13:110 for an EMT-first responder or EMT-first responder instructor;

(e) Meet the requirements for an applicant for certification pursuant to 902 KAR 13:020; or

(f) Meet the requirements for an EMT-instructor or EMT-instructor trainer pursuant to 902 KAR 13:070;

(6) Reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of an emergency medical technician examination, or disseminates information for purposes of reproduction or reconstruction of a portion of an emergency medical technician examination;

(7) Cheats, or assists another to cheat, on an examination for certification, recertification, challenge, or reentry;

(8) Does not meet the qualifications, minimum requirements, special requirements, and basic competency areas outlined in the "Emergency Medical Technician/Basic Functional Position Description". The "Emergency Medical Technician/Basic Functional Position Description", April 1993, is incorporated by reference, and may be inspected, copied, or obtained from the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday;

(9) Issues a check for a certificate on an invalid account or an account which does not have sufficient funds to pay the fee for the certificate required by 902 KAR 13:030;

(10) Discriminates in the provision of services on the basis of race, sex, age, religion, color, creed, or national origin;

(11) Practices outside or beyond the scope of his level of certification, or represents he is qualified at a level other than his current certification;

(12) Appropriates or possesses without authorization medicines, supplies, equipment, or personal items of a patient;

(13) Materially alters a certificate, or uses or possesses an altered certificate;

(14) Obtains or attempts to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge; or assists another to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge.

(15) Falsifies an application for certification or recertification;

(16) Falsifies a patient record;

(17) Has had an EMT, EMT-first responder, EMT-first responder instructor, EMT-instructor, EMT-instructor trainer, or equivalent certificate denied, suspended, revoked, or restricted in another state while holding a Kentucky certificate;

(18) Uses or attempts to use his certificate to obtain or attempts

to obtain any benefit to which he is not entitled by duress, coercion, fraud, or misrepresentation;

(19) Is not at least eighteen (18) years of age at the time of application for certification;

(20) Has been convicted of a felony or misdemeanor for which a jail sentence may be imposed. [~~comply with an administrative regulation of the cabinet relating to the certification of an EMT.~~]

Section 2. Restricted Certificate. The cabinet may restrict the certificate of a person who is certified or obtains certification as an EMT or EMT-first responder while incarcerated in a prison, correctional facility, reformatory, or jail to function as an EMT or EMT-first responder only within that facility during the period of incarceration.

Section 3. Cease and Desist Order. The cabinet may issue an order directing a person to immediately cease and desist functioning as an EMT, EMT-first responder, EMT-first responder instructor, EMT-instructor, or EMT-instructor trainer if the cabinet has reasonable cause to believe that the person may cause harm or create an imminent danger to the public if his certificate is not denied, suspended, revoked, or restricted.

Section 4. Notice Procedures. (1) The cabinet shall notify a person by certified mail sent to his last known address of record of an action to deny, revoke, suspend, or restrict his certificate, and of his right to request a hearing. Failure of an EMT to notify the cabinet of a change of address or to accept or claim the certified notice at his last known address of record shall not:

(a) Delay or negate the disciplinary action;

(b) Change the effective date of the action; or

(c) Suspend, alter, or negate the time period allowed to respond to the action or request a hearing.

(2) The written notice shall state [~~Hearings. (1) The cabinet shall furnish the certificate holder with written notice setting out~~] the substance of each offense charged with sufficient detail to reasonably apprise him of the nature, time, and place of the violation [~~thereof~~].

Section 5. Hearings. (1) An applicant or certificate holder shall have twenty (20) days to request, in writing, a hearing after written notice is given by the cabinet of its decision to deny, suspend, revoke, or restrict a certificate.

(2) The applicant or certificate holder shall have the right to:

(a) Be present in person;

(b) Be represented by counsel;

(c) Present evidence or witnesses on his behalf; and

(d) Be heard in opposition to the charges which may be instituted; and

(e) Cross-examine witnesses.

(3) The hearing may be conducted by a hearing officer appointed by the cabinet.

(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall[~~:~~

~~(a)~~] make written findings of fact and conclusions of law, [~~;~~] and enter a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

[~~(b) Submit them to the cabinet for a final decision.~~]

(6) If an applicant or certificate holder does not request a hearing within twenty (20) days of the written notice of intended action, the action shall be final.

(7) If a person receives a certificate and his check for the certification fee is later returned unpaid due to an invalid account or insufficient funds, the certificate shall be automatically suspended until:

(a) The fee is paid in full by cash, certified check, or money order; or

(b) The person requests a hearing on the suspension.

(8) The cabinet may publish in the EMS newsletter:

(a) The name of a person whose certificate has been denied, suspended, revoked, or restricted and the time period involved;

(b) The administrative regulation violated; and

(c) The nature of the violation.

(9) If a person is employed as an EMT, EMT-first responder, EMT-first responder instructor, EMT instructor, or EMT-instructor trainer at the time a final decision is made by the cabinet to deny, suspend, revoke, or restrict a certificate, the cabinet may notify the employer of the action taken.

(10) If a person fails to abide by a decision of the cabinet to deny, suspend, revoke, or restrict his certificate, the person shall be in violation of KRS 211.962 and may be charged with a Class A misdemeanor under KRS 211.990(5).

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 10, 1993

FILED WITH LRC: November 17, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Calhoun

(1) Type and number of entities affected: 13,000 EMTs and 2,000 First Responders.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is the only administrative regulation relating to disciplinary actions against certified EMTs.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: No revenue generated.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Interim Office of Health Planning & Certification
(Proposed Amendment)

902 KAR 20:004. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075, Executive Orders 92-419, 92-540
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.075 require the promulgation of administrative regulations relating to certificate of need applications and review procedures and requirements for batching, issuing advisory opinions, cost escalations and cost overruns and progress reports.

Section 1. Definitions. (1) "Affected persons" is defined by KRS 216B.015(2).

(2) "Capital expenditure authorized" means the amount of the capital expenditure approved by the interim office to implement a proposal.

(3) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).

(4) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without hearing officers' approval.

(5) "Emergency circumstances" means an act of God, fire, vandalism, structural or mechanical failure, other situations that pose a threat to life, health, or safety if not acted upon immediately, and the unavailability of ambulance services within a thirty (30) minute response time.

(6) "Hearing officers" means those persons appointed by the Secretary of the Cabinet for Human Resources to perform the adjudicatory and decision-making functions of the Interim Office of Health Planning and Certification.

(7) "Improvement" means change or addition to the premises of an existing facility so as to enhance its capability to deliver those services which it is authorized to offer under its existing license or under an outstanding certificate of need approval.

(8) "Interim office" means the Interim Office of Health Planning and Certification created by Executive Order 92-419, dated April 27, 1992, and any successor office or agency.

(9) "Mobile health services" means those services which provide medical services in various locations and which in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

(10) "New construction" means building projects other than those which constitute the repair, renovation, alteration or improvement to the physical plant of an existing health facility.

(11) "Public information channels" means the Office of Communications in the Cabinet for Human Resources.

(12) "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

(13) "Temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a health care facility is reviewed under the formal or nonsubstantive review process.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, an applicant shall provide and the hearing officer shall utilize the following information:

(1) Consistency with state plan. Whether the proposal is consistent with the state health plan.

(2) Need and accessibility.

(a) The need that the population that is to be served has for the services proposed to be offered or expanded;

(b) The extent to which residents of the area to be served, in particular members of medically under-served groups, are likely to have access to the services;

(c) Whether the proposed service will assist in meeting the health needs of members of medically under-served groups, by:

1. Comparing the percentage of the medically under-served in the applicant's service area that currently use the applicant's service with the percentage of the medically under-served who will use the proposed services if the application is approved; and

2. Determining the means, such as a clinic or emergency room and excluding admission by a physician, by which a person will have access to its services.

(d) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(e) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(f) The special needs and circumstances of an entity, such as a medical and other health profession school, multidisciplinary clinic, or specialty center, that provides a substantial portion of its services or resources to persons who do not reside in the:

1. Health service area in which the entity is located; or

2. Adjacent health service areas.

(g) Whether the approval of the proposal will adversely impact the public's access to needed services.

(3) Interrelationships and linkages.

(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.

(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(c) For proposed health services or facilities, the efficiency and appropriateness of the use of similar existing services and facilities.

(4) Costs, economic feasibility, and resource availability.

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded or relocated.

(b) The immediate and long-term financial feasibility of the proposal, including the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.

(c) The availability of:

1. Resources, including health personnel, management personnel, and funds for capital and operating needs; and

2. Alternative uses of resources for the provision of other health services.

(d) The impact of the proposal on the financial resources of the overall health care delivery system.

(e) For of construction or renovation projects the:

1. Costs and methods of the project, including the costs and methods of energy provision; and

2. Probable impact of the project on the:

a. Costs of providing health services by the applicant; and

b. Costs and charges to the public of providing health services by other persons.

(f) The effect of competition on the supply of the health services being reviewed, and whether the approval of the application will unnecessarily increase the cost of health care to the public.

(g) Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

(5) Quality of services.

(a) The quality of care provided by the applicant in the past; or

(b) The qualifications of the principals who will provide the health service which would assure that quality care will be provided; and

(c) Any perceivable detrimental effects of the proposal on the quality of similar services in the area including:

1. Whether the approval of the applicant's proposal will have an adverse impact on the quality of care provided by any person offering the same or similar services in any portion of the applicant's proposed service area due to decreased volume or number of procedures; and

2. Whether the applicant will be able to comply with applicable licensure requirements.

Section 3. Proposed New Use. If a person acquires major medical equipment without a certificate of need and proposes at any time to use that equipment to serve inpatients of a health care facility, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure.

Section 4. Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the Interim Office on "Letter of Intent Form #1".

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied, a new letter of intent shall be filed in order to resubmit an application.

(4) If an application is withdrawn prior to a final decision, a new letter of intent shall be filed.

(5) A letter of intent shall not be required for a request for nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 5. Application For Certificate Of Need. (1) Upon receipt of a letter of intent, the interim office shall:

(a) Acknowledge receipt of the letter of intent; and

(b) Provide an applicant with, as applicable:

1. "Certificate of Need Application Form #2a"; or

2. "Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services Form #2b".

(2) An original, and two (2) copies of, a certificate of need application shall be filed with the interim office as provided by the schedule established by Section 6 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the interim office shall:

1. Acknowledge receipt of the application; and

2. Notify the applicant whether the application is complete.

(b) If an application is not complete, the notice shall state that the applicant shall:

1. Complete the application by submitting specific additional information; or

2. Notify the interim office that its application shall be processed as submitted.

(4) Upon receipt of an applicant's response, the interim office shall:

(a) Deem an application complete except as provided in subsection (5) of this section; and

(b) Notify the applicant of the beginning of the review.

(5) An application to establish or relocate a psychiatric residential treatment facility (PRTF) shall not be declared complete unless the applicant provides the names and addresses of all persons owning property adjoining the proposed location of the PRTF, the county judge executive and the nearest municipal or city government.

(6)(a) An application shall be included in the next appropriate public notice of review, if it has been declared complete at least six (6) working days prior to the date of the public notice.

(b) After an application has been declared complete, an applicant may submit additional information to be made part of the public record only at the public hearing.

(7) [~~(6)~~](a) The notification of the beginning of the review shall include the:

1. Schedule for the review; and

2. Period during which a public hearing may be requested by the applicant and other affected persons.

(b) Notice to members of the public, and third party payors, shall be provided through public information channels.

(c) Notice to all other known affected persons shall be by mail.

(d) In the case of an application to establish or relocate a psychiatric residential treatment facility (PRTF) legal notice shall be given pursuant to KRS Chapter 424. Notice shall also be given to adjoining property owners, the county judge executive, and the nearest municipal or city government by mail.

Section 6. Review of Certificate of Need Application. (1) Batching review cycles shall be as follows:

TYPE OF PROPOSAL	Applications shall be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date	Month of decision, third Wednesday of:
(a) Acute, psychiatric, rehab, chemical dependency facilities, psychiatric residential treatment facilities and other related components in the SHP (except specialized equipment and services) such as IC/CC, neonatal, and surgical services (including free-standing ambulatory surgical center) and birthing centers.	October, January, April, July	November, February, May, August	February, May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, or nursing facility.	November	December	March
(c) Personal care or IC MR/DD	November, February, May, August	December, March, June, September	March, June, September, December
(d) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, C.T. scanner, cardiac catheterization, open heart surgery, and new technological developments.	December, June	January, July	April, October
(e) Day health care center, ambulatory care clinic, rehab agency, hospice, home health or home health/hospice.	October, January, May, July	November, February, June, August	February, May, September, November
(f) Ambulance, NE health transportation, and air ambulance services.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December
(g) All mobile services except those covered under specialized equipment and services.	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December
(h) Any proposals not listed above shall be placed in the most appropriate cycle as determined by the interim office.			
(i) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a)(b)(c)(d)(e)(f) and (g) shall be processed in accordance with KRS 216B.095(1).			

(2) The interim office shall notify the applicant by certified mail, and any party to the proceeding by regular mail, of the hearing officers' final action on a certificate of need application.

(3) The written notification shall include:

(a) Verification that the criteria have been met;

(b) If the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency;

(c) Amount of capital expenditure authorized, where applicable;

(d) If the application is disapproved, the reasons for the disapproval; and

(e) Notice of appeal rights.

(4) If an application is not declared complete with a year from the date of filing it shall expire and shall not be reviewed.

(5) If an application for certificate of need is disapproved, it shall not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances to be determined by a hearing officer.

Section 7. Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be:

(a) Given to third party payors and members of the public through public information channels; and

(b) Mailed to other known affected persons at least ten (10) days before the date of the hearing.

(c) In the case of an application to establish a psychiatric residential treatment facility (PRTF) legal notice shall be given pursuant to KRS Chapter 424. Notice shall also be given to adjoining property owners, the county judge executive, and the nearest municipal or city government by mail at least ten (10) days before the date of the hearing.

(2)(a) A hearing request may be withdrawn by written request filed with the interim office.

(b) If a hearing has been scheduled, a written request to withdraw shall be accepted if it is received by the interim office at lest three (3) working days prior to the scheduled hearing date.

(c) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation.

(d) Agreement of other affected persons shall not be required.

(3) A hearing officer may:

(a) Conduct prehearing conferences to resolve issues not in dispute or not requiring an evidentiary record; and

(b) Issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(4) A hearing officer may, by prehearing order, require affected persons to submit to the interim office five (5) working days prior to the scheduled date of the hearing a list of:

(a) Witnesses on Form #3 (Witness List (1993));

(b) Exhibits they intend to introduce on Form #4 (Exhibit List (1993)); or

(c) Those persons who will enter an appearance on behalf of a

party on Form #5 (Notice of Appearance (1993)).

(5) A hearing officer may:

(a) Place reasonable time limits upon the presentation of testimony, evidence, and argument; and

(b) Terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(6) Except for the exchange of exhibits, prehearing discovery of an affected person by another affected person shall not be permitted.

(7) Upon completion of the hearing, the record on a certificate of need application shall be:

(a) Final for evidentiary purposes; and

(b) Reopened only upon order of the hearing officer.

(8) Upon completion of a public hearing, parties to the proceedings may submit proposed findings of fact and conclusions of law for consideration by the hearing officers, within reasonable time limits set by the hearing officers.

Section 8. Request for Reconsideration. (1) The hearing officers shall act upon request for reconsideration no later than thirty (30) days following receipt of a request.

(2) If reconsideration is granted, a reconsideration hearing shall be held within thirty (30) days of the decision to grant reconsideration, and a final decision shall be made no later than thirty (30) days following the reconsideration hearing.

Section 9. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), a proposal specified in this section that requires approval of a certificate shall be granted for nonsubstantive review status.

(a) Technical modifications to an approved certificate of need;

(b) Cost overruns of the capital expenditure authorized by an approved certificate of need;

(c) Emergency circumstances which, if not promptly acted upon, would pose a threat to the life, health and safety of any citizen of the Commonwealth. An applicant acting under this subsection may proceed to relieve any of these listed emergency circumstances provided the:

1. Office is notified in writing prior to an action; and

2. Application is submitted within thirty (30) days of the occurrence of the emergency.

(d) New construction which does not involve a substantial change in bed capacity, a substantial change in a health service, or the addition of major medical equipment;

(e) Applications proposing the use of existing mobile services and equipment to provide health care access in unserved geographic areas of the Commonwealth;

(f) Applications proposing the use of existing mobile services to provide health care access for which the Kentucky General Assembly has specifically appropriated funds; and

(g) Department of Corrections applications proposing the establishment or construction of nursing facility beds for which the Kentucky General Assembly has specifically appropriated funds.

(h) Day health care programs.

(2) Procedures for nonsubstantive review shall be as follows:

(a) The original certificate of need application and two (2) copies, with a request for nonsubstantive review shall be submitted to the interim office.

(b) Within fifteen (15) days of the receipt of the application, the interim office shall:

1. Acknowledge receipt of the application; and ~~[in writing to the applicant, and shall]~~

2. Notify the applicant whether ~~[or not]~~ the application is complete.

(c) If the application is not complete, the notice shall state that ~~[to]~~ the applicant shall:

1. Complete the application by submitting specific additional information; or

2. Notify the interim office that its application shall be processed as submitted. ~~[give the applicant the option of submitting the additional information or of notifying the interim office upon receipt of the request for additional information, that he elects for the application to be processed as originally submitted.]~~

(d) Upon receipt of an applicant's response, the interim office shall:

1. Deem an application complete except as provided in subparagraph 3 of this paragraph; and

2. Notify the applicant of the beginning of the review.

3. An application to relocate a psychiatric residential treatment facility (PRTF) shall not be declared complete unless the applicant provides the names and addresses of all persons owning property adjoining the proposed location of the PRTF, the county judge executive and the nearest municipal or city government. ~~[the requested additional information by the interim office, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted, the interim office shall declare the application to be deemed complete.]~~

(e) No later than ten (10) days after an application has been deemed complete, a decision by a hearing officer on a request for nonsubstantive review shall be mailed to the applicant. A notice of a decision to conduct a nonsubstantive review shall be:

1. Given to third party payors and members of the public through public information channels; and

2. Mailed to other known affected persons.

3. In the case of a request for a change of location of a psychiatric residential treatment facility (PRTF) legal notice shall be given pursuant to KRS Chapter 424. Notice shall also be given to adjoining property owners, the county judge executive, and the nearest municipal or city government by mail no later than the tenth day after the application is deemed complete.

(f) If nonsubstantive review status is denied, the applicant may request a public hearing by filing a request with the interim office within ten (10) days of the notice to deny nonsubstantive review. As applicable, hearings shall be conducted as provided by KRS 216B.085.

(g) If a certificate of need is denied following a nonsubstantive review and a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 10. Conditions Relative to a Certificate of Need. (1) A person shall not transfer from one (1) legal applicant to another an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need.

(2) Other certificates of need may be transferred to the new owner of the facility or service if the change of ownership occurs prior to the implementation of the project for which the certificate of need was issued.

(3) A certificate of need approved for establishment of a new health facility or the replacement of an existing facility is valid only for the location stated on the certificate.

(4) A certificate of need holder shall notify the interim office of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 11. Administrative Cost Escalations and Overruns. (1) A certificate of need using Form #2c (1993) shall be required for an escalation or cost overrun of the capital expenditure authorized by an approved certificate of need in all instances where there is a substantial change in the project, or where the escalation or overrun exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

(b) Twenty (20) percent of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(2)(a) Requests for administrative cost escalations or cost overruns shall be submitted to the interim office, on the following forms:

1. Form #6 (Cost Escalation (1992)); or

2. Form #7 (Cost Overrun (1992)).

(b) The requests shall include:

1. Amount of the escalation of overrun;

2. Factors causing the escalation or overrun; and

3. Information to assure that the scope of the project as originally approved has not changed.

(c) The hearing officers shall review all requests for administrative cost escalations and overruns and the interim office shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation or overrun meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

Section 12. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.

(2)(a) A notice specifying the date each progress report is due shall be sent to a holder of a certificate of need.

(b) The interim office shall review a progress report and shall:

1. Determine whether the items required to be completed during the six (6) month period covered by the progress report have been completed; and

2. If the items have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure and occupancy by the Division of Licensing and Regulation; or

(b) The appropriate license has been obtained; and

(c) A final cost breakdown has been submitted; and

(d) For projects for which a certificate of need has been issued for a specific service area, documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project has been deemed complete by the interim office, if the information submitted is deemed incomplete, or otherwise deficient, the interim office may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5) If the interim office determines that the items have not been completed for reasons other than those set forth in paragraph (c) of this subsection, for the failure to complete, it shall notify the holder of the certificate of need, in writing, that:

(a) It has determined to revoke the certificate of need;

(b) The revocation shall become final thirty (30) days from the date of the notice of revocation, unless the holder requests a hearing to show cause why the certificate of need shall not be revoked.

(c) A certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure to complete the items required was due to emergency circumstances, or other causes that:

1. Could not reasonably be anticipated and avoided by the holder; or

2. Were not the result of action or inaction of the holder.

(6) The first progress report shall include the following:

(a) On all projects for purchase of equipment only, a copy of the purchase order;

(b) For all projects involving the acquisition of real property, evidence of an option to acquire the site;

(c) For all construction or renovation projects, evidence that schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(7) For projects not deemed complete a second progress report shall include the following:

(a) Documentation that beds in all projects for conversion of beds are licensed;

(b) Documentation that all projects for addition of new services or expansion of existing services, not involving construction or renovation or the installation of equipment, are approved for licensure and occupancy by the Division of Licensing and Regulation and licensed, if applicable; and

(c) All construction or renovation projects shall include:

1. Schedule for project completion with projected dates;

2. Evidence of preliminary negotiation with financial agent; and

3. Evidence of preliminary negotiation with contractors.

(8) For projects not deemed complete, a third progress report shall include the following:

(a) For construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final financing. If the source of capital is to be a financing agreement, the holder must have evidence that a final enforceable agreement or note has been executed;

3. Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation;

4. Enforceable contract with construction contractor;

(b) On all projects for purchase of equipment only, evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(9) For projects not deemed complete, a fourth progress report shall include documentation of final plan approval by the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and that the walls and roof are up and plumbing is roughed in on all construction/renovation projects.

(10) For projects not deemed complete, a fifth progress report shall include documentation that construction/renovation is progressing according to schedule for project completion on all construction or renovation projects.

(11) For projects not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure and occupancy by the Division of Licensing and Regulation and where applicable, that the appropriate license has been obtained for the project.

(12) For projects not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the interim office with a written statement showing cause why the certificate should not be revoked. The interim office may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule of completion, subject to progress reports which the interim office may require.

(13) Within six (6) months following licensure of a project for which a certificate of need has been issued for a specific service area, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to

provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(14) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 13. Advisory Opinions. The process for seeking an advisory opinion from the hearing officers shall be as follows:

(1) Requests for advisory opinions shall be completed on Form #9 (Advisory Opinion (1993 [~~1992~~])).

(2) The hearing officers may require verification of information and may request additional documentation, if necessary.

(3) The hearing officers shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(4) An affected person may request a public hearing regarding a written advisory opinion by requesting same from the interim office in writing within thirty (30) days of the public notice of the advisory opinion which shall be published in the monthly certificate of need newsletter and disseminated through public information channels. If a public hearing is not requested, the advisory opinion shall be the final action of the administrative agency, subject to judicial review. Failure to request a public hearing shall not constitute a failure to exhaust administrative remedies.

(5) Advisory opinion hearings shall be conducted pursuant to the provisions of Section 5 of this administrative regulation.

Section 14. Final Decisions. All final decisions regarding certificate of need related matters will be decided by the individual hearing officer to whom that particular matter is assigned.

Section 15. Incorporation by Reference. (1) "Form #1 (Letter of Intent (1992))", "Form #2a (Certificate of Need Application (1993-1))", "Form #2b (Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services (1993))", "Form #2c (Certificate of Need Application for Change of Location, Ownership, Replacement, Cost Escalation or Cost Overrun (1993-1))", "Form #3 (Witness List (1993))", "Form #4 (Exhibit List (1993))", "Form #5 (Notice of Appearance List (1993))", "Form #6 (Cost Escalation (1992))", "Form #7 (Cost Overrun (1992))", "Form #8 (Progress Report (1993))" and "Form #9 (Advisory Opinion (1993))", "Form #10 (Acquisition of a Health Facility Notice of Intent (1993))" are incorporated by reference.

(2) These forms may be inspected, copied or obtained at the Interim Office of Health Planning & Certification, Cabinet for Human Resources, 275 East Main, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 16. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

GREG LAWTHER, Acting Executive Director
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 11, 1993

FILED WITH LRC: December 6, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994 of their desire to appear and testify at the hearing: William Kimble Moore, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Greg Lawther

(1) Type and number of entities affected: Applicants for certificate of need for establishing day health care programs and applications for establishing or relocating psychiatric residential treatment facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: None - certificate of need application fees remain unchanged.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Persons seeking to establish or relocate psychiatric residential treatment facilities must provide the names and addresses of adjoining property owners.

(2) Effects on the promulgating administrative body: Applications for the establishment of day health care programs may be processed as nonsubstantive review applications. Additionally, legal notice will be published and individual notice will be provided to local government and adjoining property owners when applications for the establishment or relocation of psychiatric residential treatment facility is received.

(a) Direct and indirect costs or savings:

1. First year: Unknown. Additional costs will be incurred in providing notice of psychiatric residential treatment facility applications, but the cost cannot be determined as there is no way to project the number of applications that will be received.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Publishing legal notice of psychiatric residential treatment facility applications will increase cost but the amount cannot be determined for reason that there is no way to project the number of applications that will be received.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Minimal

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Regulations apply uniformly to all applicants for day health care programs and psychiatric residential treatment facilities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. The amendments do require that local governments be given notice of psychiatric residential treatment facility applications. Upon receipt of notice local government can then decide whether to participate in the certificate of need process.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Notice of psychiatric residential treatment facility applications will be given to both county and municipal government.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? The administrative regulation does not directly affect local government. However, upon receipt of notice of a psychiatric residential treatment facility application, local government may decide to participate in the certificate of need

process at their discretion.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 45:030. Bakery products.

RELATES TO: KRS Chapter 217 [~~217.005 to 217.215, 217.992~~]
STATUTORY AUTHORITY: KRS 194.050, 217.125[~~, 211.090~~]
NECESSITY AND FUNCTION: [~~The Kentucky Food, Drug and Cosmetic Act,~~] KRS Chapter 217 [~~217.005 to 217.215 and 217.992~~] authorizes the Cabinet for Human Resources to set standards of identity and labeling requirements for food products. The purpose [~~function~~] of this administrative regulation is to prescribe requirements for specific standardized bakery products. [~~standards of identity and uniform labeling requirements for breads.~~]

[~~Section 1. Citation of Regulation. This regulation may be cited as the "State Bakery Products Standards of Identity and Labeling Requirements Regulation."~~]

Section 1. Definitions. (1) "Bread" if used in the name of the food means the unit weighs one-half (1/2) pound or more after cooling.

(2) "Rolls and buns" if used in the name of food means the unit weighs less than one-half (1/2) pound after cooling.

Section 2. Bread, [~~White Bread, and~~] Rolls and [~~, White Rolls, or~~] Buns[~~, White Buns~~]; Standard of Identity; Label Statement of Optional Ingredients. (1) Each of the foods bread, white bread, rolls, white rolls, buns, white buns is prepared by baking a kneaded yeast-leavened dough, made by moistening flour with water or with one (1) or more of the optional liquid ingredients specified in this section or with a [~~any~~] mixture of water and one (1) or more of the [~~such~~] ingredients. The potassium bromate in any bromated flour used and the monocalcium phosphate in any phosphated flour used shall be deemed to be optional ingredients in the bread or rolls. Each of the finished foods contains not less than sixty-two (62) percent total solids as determined by the method prescribed in subsection (2) of this section. [~~such foods is seasoned with salt, and in its preparation one (1) or more of~~] The following optional ingredients [~~specified in this section and the optional gluten ingredient specified in subsection (2) of this section~~] may be used:

(a) Shortening[~~, in which or in conjunction with which~~] may be used with one (1) or any combination of two (2) or more of the following:

1. Lecithin, hydroxylated lecithin (either of which may include related phosphatides derived from the corn oil or soybean oil from which the [~~such~~] ingredients were obtained).

2. Mono- and diglycerides of fat-forming fatty acids, diacetyl tartaric acid esters of mono- and diglycerides of fat-forming fatty acids, propylene glycol mono- and diesters of fat-forming fatty acids, and other ingredients that perform a similar function. [~~or a combination of two (2) or more of these. The total weight of these ingredients used does not exceed twenty (20) percent by weight of the combination of such ingredients and the shortening, and the total amount of monoglyceride, diacetyl tartaric acid ester of monoglyceride, and propylene glycol monoester does not exceed eight (8) percent by weight of the combination; but if purified or concentrated monoglyceride alone is used, the amount does not exceed ten (10) percent by weight of the combination.~~]

(b) Milk or other dairy products in the quantity and [~~, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed partly skimmed milk, sweetened condensed skim milk, nonfat dry milk, or any combination of two (2) or more of these; except that any such ingredient or combination, together with any butter or cream used, is so limited in quantity or~~] composition as not to meet the requirements for milk or other dairy ingredients prescribed for milk bread by Section 4 of this administrative regulation. If nonfat [~~Whenever~~] milk solids [~~not fat~~] in any form [~~of the forms referred to in this subsection~~] are used, approved carrageenan or salts of carrageenan may be used, in a quantity not in excess of eight-tenths (0.8) percent by weight of nonfat [~~such~~] milk solids [~~not fat~~].

[~~(c) Buttermilk, concentrated buttermilk, dried buttermilk, sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, cheese whey, concentrated cheese whey, dried cheese whey, milk proteins, or any combination of two (2) or more of these.~~]

(c) Egg products. [~~(d) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen egg yolks, dried yolks, egg white, frozen egg white, dried egg white, or any combination of two (2) or more of these.~~]

(d) Nutritive carbohydrate sweeteners. [~~(e) Sugar, invert sugar (in congealed or syrup form), light colored brown sugar, refiner's syrup, dextrose, honey, corn syrup, glucose syrup, dried corn syrup, dried glucose syrup, nondiastatic malt syrup, nondiastatic dried malt syrup, molasses (except blackstrap molasses), or any combination of two (2) or more of these.~~

~~(f) One (1) or any combination of the following:~~

~~1. Malt syrup, dried malt syrup, malted barley flour, malted wheat flour, each of which is diastatically active.~~

~~2. Harmless preparation of enzymes obtained from aspergillus oryzae, bromelain preparations obtained from pineapple, or papain preparations obtained from papaya, any of which may be added in a suitable, harmless carrier but the quantity of any such carrier shall be no greater than reasonably necessary to effect a uniform mixture of the enzymes with the flour used.~~

~~3. Harmless preparations of a amylases, obtained from bacillus subtilis, which may be added in a suitable, harmless carrier, but the quantity of any such carrier shall be no greater than reasonably necessary to effect a uniform mixture of the enzymes with the flour used.~~

~~(g) Inactive dried yeast, singly or in combination, of saccharomyces cervisiae, saccharomyces fragilis, or candida utilis (torula); but the total quantity thereof is not more than two (2) parts for each 100 parts by weight of the flour used.~~]

(e) Enzyme active preparations.

(f) [~~(h) Harmless~~] Lactic-acid producing bacteria.

(g) Nonwheat flours, nonwheat meals, nonwheat grits, wheat and nonwheat starches [~~(i) Corn flour (including finely ground corn meal), potato flour, rice flour, wheat starch, cornstarch, milo starch, potato starch, sweet potato starch (any of~~] (which may be wholly or in part dextrinized), dextrinized wheat flour, [~~soy flour,~~] or any combination of two (2) or more of these; if [~~but~~] the total quantity [~~thereof~~] is not more than three (3) parts for each 100 parts by weight of flour used.

(h) [~~(j)~~] Ground dehulled soybeans[~~, which~~] may be heat-treated and have [~~from which~~] oil [~~may be~~] removed, but [~~which~~] retain enzymatic activity; but the quantity [~~thereof~~] is not more than five-tenths (0.5) part of each 100 parts by weight of flour used.

(i) Yeast nutrients and calcium salts; if the total quantity of the ingredients, with the exception of monocalcium phosphate and calcium propionate, [~~(k) Calcium sulfate, calcium lactate, calcium carbonate, dicalcium phosphate, ammonium phosphates, ammonium sulfate, ammonium chloride, or any combination of two (2) or more of these; but the total quantity of such ingredients~~] is not more than 0.25 part for each 100 parts by weight of flour used. The quantity of monocalcium phosphate including the quantity in the flours used, is not more than 0.75 part for each 100 parts by weight of flour used. A calcium propionate used as a preservative in bread, rolls, or buns is not subject to the limitation prescribed in this subsection.

(j) [~~(l)~~] Potassium bromate, calcium bromate, potassium iodate, calcium iodate, calcium peroxide, or any combination of two (2) or

more of these; if [but] the total quantity, [thereof (]including the potassium bromate in any bromated flour used, [)] is not more than 0.0075 part for each 100 parts by weight of flour used.

(k) [(m)] Azodicarbonamide; if [, in a carrier consisting of starch to which tricalcium phosphate may be added as an anticaking agent; but] the total quantity, [of azodicarbonamide,] including any quantity in the flour used, is not more than 0.0045 part for each 100 parts by weight of flour used.

(l) Dough strengtheners and other dough conditioners not listed or referred to in this subsection; if the total quantities of the ingredients or combination is not more than five-tenths (0.5) part for each 100 parts by weight of flour used.

[(n) Monocalcium phosphate, but the total quantity thereof, including the quantity in any phosphated flour used and any quantity added, is not more than 0.75 part by weight for each 100 parts by weight of flour used.

1. A vinegar, in a quantity equivalent in acid strength to not more than one (1) pint of 100 grain distilled vinegar for each 100 pounds of flour used.

2. Calcium propionate, sodium propionate, or any mixture of these, but the total quantity thereof is not more than 0.32 part for each 100 parts by weight of flour used.

3. Sodium diacetate, but the quantity thereof is not more than four tenths (0.4) part or each 100 parts by weight of flour used.

4. Lactic acid, in such quantity that the pH of the finished bread is not less than four and five tenths (4.5).]

(m) Spices, [(o) Spice, with which may be included] spice oil, and spice extract.

[(p) Polysorbate 60, calcium stearoyl 2 lactylate, lactylic sterate, sodium stearyl fumarate, succinylated monoglycerides, sodium stearoyl 2 lactylate, ethoxylated mono- and diglycerides, alone or in combination; but the total quantity of such ingredient or combination is not more than five tenths (0.5) part for each 100 parts by weight of flour used.]

(n) Coloring may not be added as part of another ingredient except as permitted by paragraph (m) of this subsection and except that coloring which may be present in butter or margarine if the intensity of the butter or margarine color does not exceed "medium high" (MH) if viewed under diffused light (7400 Kelvin) against the Munsell Butter Color Comparator. The MH designation corresponds to the Munsell renotation of 3.8Y 7.9/7.6.

(o) Other ingredients that do not change the basic identity or adversely affect the physical and nutritional characteristics of the food.

[(q) L Cysteine (which may be added in the form of the hydrochloride salt, including hydrates thereof), in a quantity not to exceed 0.009 part for each 100 parts by weight of flour used. Each of such foods contains not less than sixty two (62) percent of]

(2) Total solids are [, as] determined by the method prescribed in "Official Methods of Analysis of the Association of Official Agricultural Chemists", Fifteenth [Seventh] Edition (1990) [, 1950], Method No. 935.36(a) [page 209, section 13.70, under "Total Solids in an Entire Loaf of Bread." (Ed. note, 10th Edition, 1965, p. 203, sec. 13.077),] except that if the baked unit weighs one (1) pound or more, one (1) entire unit is used for the determination. [, and] If the baked unit weighs less than one (1) pound, enough [such number of entire] units to [as] weigh one (1) pound or more are [is] used [for the determination]. Copies of the "Official Methods of Analysis of the Association of Official Analytical Chemists", incorporated by reference, may be viewed at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. Copies may also be obtained from the Association of Official Analytical Chemists, 2200 Wilson Boulevard, Suite 400, Arlington, VA 22201-3301.

[(r) Ascorbic acid, but the total quantity thereof, including any quantity in the flour used, is not more than 0.02 part for each 100 parts by weight of flour used.]

(3) Required label statement of identity.

(a) If the baked product meets the requirements described in Sections 1 and 2(1) of this administrative regulation, then the product labeling shall declare the name to be "bread", "white bread", "rolls", "white rolls", "buns", or "white buns", as applicable. If the food contains not less than 2.56 percent by weight of whole egg solids, the name of the food may be "egg bread", "egg rolls", or "egg buns", as applicable, accompanied by the statement "Contains - medium-sized egg(s) per pound" in easily legible bold face print or type, the blank to be filled in with the number which represents the whole egg content of the food expressed to the nearest one-fifth (1/5) egg but not greater than the amount actually present. For purposes of this administrative regulation, whole egg solids are the edible contents of eggs calculated on a moisture-free basis and exclusive of nonegg solids which may be present in standardized and other commercial egg products. One (1) medium-sized egg is equivalent to 0.41 ounce of whole egg solids.

(b) If the label bears a representation, other than in the ingredient listing, of the presence of egg in the food, e.g., the word egg or a phonetic equivalent spelling of the word egg, or a picture of an egg, the food shall contain not less than 2.56 percent of whole egg solids.

(c) All ingredients used in the food shall be declared on the label.

[(2) Bread, white bread is baked in units each of which weighs one half (1/2) pound or more after cooling. Rolls, white rolls, and buns, white buns are baked in units each of which weighs less than one half (1/2) pound after cooling. The optional gluten ingredient referred to in subsection (1) of this section is suitable wheat gluten in such quantity that for each 100 parts by weight of flour used the added gluten does not exceed two (2) parts for dough used to make loaves and does not exceed four (4) parts for dough used to make rolls or buns. For the purposes of this section, suitable wheat gluten refers to gluten which is not denatured, as determined by the test prescribed in this subsection. It is made from wheat flour from which starch has been removed by washing with water until the gluten contains not less than seventy five (75) percent protein on a moisture free basis. To determine whether the wheat gluten is denatured, use a laboratory sigma mixer of one (1) pint capacity (Carl Heinrich Company, Boston, Massachusetts), or other mixer which will give equivalent results. With 100 milliliters of water at twenty five (25) degrees Centigrade, in the mixer, start it operating and sprinkle in thirty (30) grams of the gluten to be tested. Observe the suspension for a visual change of consistency, indicating that the gluten is beginning to agglomerate, and when this is noted, stop the mixer. If the pieces of agglomerated gluten can be combined into a single homogeneous mass of dough which shows definite elasticity and film forming properties, the gluten is deemed not to be denatured. If the pieces cannot be so combined, put them back in the water and continue the mixing. If a dough with the properties specified in this subsection is not obtainable within a total mixing time of one (1) hour, the gluten is deemed to be denatured.

(3) When any optional ingredient permitted by subsection (1)(n) of this section is used, except a vinegar and except monocalcium phosphate, in a quantity less than 0.25 part for each 100 parts by weight of flour, the label shall bear the statement "added to retard spoilage," the blank being filled in with the name by which the ingredient used is designated in such paragraph.

(a) When an optional ingredient permitted by subsection (1)(o) of this section is used, the label shall bear the statement "spiced" or "spice added" or "with added spice;" but in lieu of the word "spice" in such statements, the common or usual name of the spice may be used.

(b) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements specified in this subsection shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.]

Section 3. Enriched Bread and Enriched Rolls or Enriched Buns; Identity; Label Statements of Optional Ingredients. (1) Each of the foods enriched bread, enriched rolls, and enriched buns conforms to the definitions and standard of identity prescribed in Sections 1 and 2 of this administrative regulation; and is subject to the requirements for label statement of optional ingredients prescribed for bread by Section 2(1) and (3) of this administrative regulation, except that:

(a) Each [~~such~~] food contains in each pound:

1. One and eight-tenths (1.8) milligrams of thiamine;

2. One and one-tenth (1.1) milligrams of riboflavin;

3. Fifteen (15) milligrams of niacin; and

4. Twelve and five-tenths (12.5) milligrams of iron.

(b) Each [~~such~~] food may contain added calcium in a [~~such~~] quantity that the total calcium content is 600 milligrams per pound of the finished food. If insufficient calcium is added to meet the 600 milligram level per pound of the finished food, no claim may be made on the label for calcium as a nutrient.

(c) The requirements of paragraphs (a) and (b) of this subsection will [~~be deemed to~~] have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels of the vitamins and minerals are maintained throughout the expected shelf life of the food under customary conditions of distribution and storage. The quantitative content of the following vitamins shall be calculated in terms of the following chemically identifiable reference forms:

	REFERENCE FORM		
Vitamin	Name	Empirical formula	Molecular weight
Thiamine	Thiamine chloride hydrochloride	$C_{12}H_{17}ClN_4OS$ HCl	337.28
Riboflavin	Riboflavin	$C_{17}H_{20}N_4O_6$	376.37
Niacin	Niacin	$C_6H_5NO^2$	123.11

(d) Each [~~such~~] food may also contain wheat germ or partly defatted wheat germ, but the total quantity thereof, including any wheat germ or partly defatted wheat germ in any enriched flour used, shall not be more than five (5) percent of the flour ingredient.

(e) Enriched flour may be used, in whole or in part, instead of flour. As used in this section, the term "enriched flour" includes enriched bromated flour.

(f) The limitation prescribed by Section 2(1)(b) of this administrative regulation on the quantity and composition of milk and dairy ingredients does not apply.

(g) [~~All ingredients from which the food is fabricated shall be safe and suitable.~~] The vitamins and minerals added to the food for enrichment purposes may be supplied by any safe and suitable substances. Niacin equivalents as derived from tryptophan content shall not be used in determining total niacin content.

(2) If the baked product meets the requirements prescribed in Sections 1 and 2 of this administrative regulation and this section, then the product labeling shall declare the name to be "enriched bread", "enriched rolls", or "enriched buns", as applicable. If the food contains not less than 2.56 percent by weight of whole egg solids, the name of the food may be "enriched egg bread", "enriched egg rolls", or "enriched egg buns", as applicable, accompanied by the statement "Contains - medium-sized egg(s) per pound" in easily legible bold face print or type. The blank shall be filled in with the number which represents the whole egg content of the food expressed to the nearest one-fifth (1/5) egg, but not greater than the amount actually present. For purposes of this administrative regulation, whole egg solids are the edible contents of eggs calculated on a moisture-free basis and exclusive of nonegg solids which may be present in standardized and other commercial egg products. One (1) medium-sized egg is equivalent to 0.41 ounce of whole egg solids. If the food complies with the requirements for milk and other dairy products content in Section 2 of this administrative regulation for milk bread, the name of the food may be "enriched milk bread", "enriched milk rolls", or "enriched milk buns", as applicable. If the food complies with the requirements for both enriched egg bread and enriched milk bread in this section, the name of the food may be "enriched milk and egg bread", "enriched milk and egg rolls", or "enriched milk and egg buns", as applicable, accompanied by the statement "Contains - medium-sized egg(s) per pound" in easily legible bold face print or type, the blank to be filled in with the number which represents the whole egg content of the food expressed to the nearest one-fifth (1/5) egg, but no greater than the amount actually present. For purposes of this administrative regulation, whole egg solids are the edible contents of eggs calculated on a moisture-free basis and exclusive of nonegg solids which may be present in standardized or other commercial egg products. One (1) medium-sized egg is equivalent to 0.41 ounce of whole egg solids. [~~Enriched bread is baked in units each of which weighs one half (1/2) pound or more after cooling. Enriched rolls or enriched buns are baked in units each of which weighs less than one half (1/2) pound after cooling. The optional gluten ingredient described in Section 2(2) of this regulation may be added in such quantity that for each 100 parts by weight of flour used, the added gluten does not exceed two (2) parts for dough used to make loaves and does not exceed four (4) parts for dough used to make rolls or buns.~~]

Section 4. Milk Bread and Milk Rolls or Milk Buns; Identity; Label Statement of Optional Ingredients. (1) Each of the foods milk bread, milk rolls, and milk buns conforms to the definitions and standard of identity prescribed in Sections 1 and 2 of this administrative regulation [~~,~~] and is subject to the requirements for label statement of optional ingredients prescribed for bread and rolls or buns by Section 2(1), (2) and (3) of this administrative regulation, except that:

(a) The only moistening ingredient permitted in the preparation of the dough is milk or, as an alternative, a combination of dairy products in a proportion that the weight of the nonfat milk solids is not more than two and three-tenths (2.3) times and not less than one and two-tenths (1.2) times the weight of the milkfat therein, with or without water, in a quantity that provides not less than eight and two-tenths (8.2) parts milk solids for each 100 parts by weight of flour.

(b) No buttermilk, buttermilk products, cheese whey, cheese whey product, or milk protein is used.

(2) If the baked product meets the requirements prescribed in Sections 1 and 2 of this administrative regulation and this section, then the product labeling shall declare the name to be "milk bread", "milk rolls", or "milk buns", as applicable. [~~Milk is used as the sole moistening ingredient in preparing the dough; or in lieu of milk, one (1) or more of the dairy ingredients prescribed in subsection (3) of this section is used, with or without water in a quantity containing not less than eight and two tenths (8.2) parts by weight of milk solids for each 100 parts by weight of flour used (including any bromated flour or phosphated flour used).~~

~~(b) No ingredient permitted by Section 2(1)(c) of this regulation is used.~~

~~(2) Milk bread is baked in units each of which weighs one half (1/2) pound or more after cooling. Milk rolls or milk buns are baked in units each of which weighs less than one half (1/2) pound after cooling.~~

~~(3) The dairy ingredients referred to in subsection (1)(a) of this section are concentrated milk, evaporated milk, sweetened condensed milk, dried milk, and a mixture of butter, cream, butter oil, dehydrated butter, anhydrous milk fat, or any combination of two (2) or more of these with skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, nonfat dry milk, or any two (2) or more of these, in such proportion that the weight of nonfat milk solids in such mixture is not more than two and three tenths (2.3) times and not less than~~

~~one and two tenths (1.2) times the weight of the milk fat therein.~~]

Section 5. Raisin Bread and Raisin Rolls or Raisin Buns; Standard of Identity; Label Statement of Optional Ingredients. (1) Each of the foods raisin bread, raisin rolls, and raisin buns conforms to the definitions and standard of identity prescribed in Sections 1 and 2 of this administrative regulation [,] and is subject to the requirements for label statement of optional ingredients, prescribed for bread and rolls or buns by Section 2(1) and (3) of this administrative regulation, except that:

(a) Not less than fifty (50) parts by weight of seeded or seedless raisins are used for each 100 parts by weight of flour used [~~(including any bromated flour or phosphated flour used)~~].

(b) Water extract of raisins may be used, but not to replace raisins.

(c) The baked units may bear icing or frosting.

(d) The limitation prescribed by Section 2(1)(b) of this administrative regulation on the quantity and composition of dairy ingredients does not apply.

(e) The total solids are determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists", Fifteenth Edition (1990) Method no. 935.36(b). The "Official Methods of Analysis of the Association of Official Analytical Chemists", incorporated by reference, may be viewed at the Office of the Commissioner for Health Services, 275 East Main Street; Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

(2) If the baked product meets the requirements prescribed in Sections 1 and 2 of this administrative regulation and this section, then the product labeling shall declare the name to be "raisin bread", "raisin rolls", or "raisin buns", as applicable. If the food contains not less than 2.56 percent by weight of whole egg solids, the name of the food may be "raisin and egg bread", "raisin and egg rolls", or "raisin and egg buns", as applicable, accompanied by the statement "Contains - medium-sized egg(s) per pound" in easily legible bold face print or type, the blank to be filled in with the number which represents the whole egg content of the food expressed to the nearest one-fifth (1/5) egg, but not greater than the amount actually present. For purposes of this administrative regulation, whole egg solids are the edible contents of eggs calculated on a moisture-free basis and exclusive of nonegg solids which may be present in standardized and other commercial egg products. One (1) medium-sized egg is equivalent to 0.41 ounce of whole egg solids. [~~In determining its total solids, instead of following the direction "Grind sample just to pass 20 mesh sieve" (Official Methods of Analysis of the Association of Official Agricultural Chemists, Seventh Edition 1950, page 209, section 13.70 (Ed. note, 10th edition, 1965, p.203, sec. 13.077), under "Total Solids in an Entire Loaf of Bread") comminute the sample by passing it twice through a food chopper.~~

~~(f) The optional gluten ingredient described in Section 2(2) of this regulation may be added in such quantity that for each 100 parts by weight of flour used the added gluten does not exceed four (4) parts for dough used to make loaves, rolls, or buns.~~

~~(2) Raisin bread is baked in units each of which weighs one half (1/2) pound or more after cooling. Raisin rolls or raisin buns are baked in units each of which weighs less than one half (1/2) pound after cooling.~~]

Section 6. Whole Wheat Bread, Graham Bread, Entire Wheat Bread, and Whole Wheat Rolls, Graham Rolls, Entire Wheat Rolls, or Whole Wheat Buns, Graham Buns, Entire Wheat Buns; Identity; Label Statement of Optional Ingredients. (1) Each of the foods whole wheat bread, graham bread, entire wheat bread, whole wheat rolls, graham rolls, entire wheat rolls, whole wheat buns, graham buns, entire wheat buns conforms to the definitions and standard of identity prescribed in Sections 1 and 2 of this administrative regulation [,] and is subject to the requirements for label statement of optional ingredients, prescribed for bread, rolls, and buns by Section 2(1) and (3) of this administrative regulation, except that:

(a) The dough is made from the optional ingredient whole wheat flour, bromated whole wheat flour, or a combination. No flour, bromated flour, or phosphated flour is used. The potassium bromate in the bromated whole wheat flour used is an additional optional ingredient in the whole wheat bread, whole wheat rolls, or whole wheat buns. [~~whole wheat flour and no flour or gluten ingredient as described in Section 2(2) of this regulation is used therein.~~]

(b) The limitation prescribed by Section 2(1)(b) of this administrative regulation on the quantity and composition of dairy ingredients does not apply.

[~~(c) The total weight of calcium propionate, sodium propionate, or mixtures of these used is not more than 0.38 part for each 100 parts by weight of the whole wheat flour used. The potassium bromate in any bromated whole wheat flour used shall be deemed to be an optional ingredient in the whole wheat bread or whole wheat rolls.~~]

(2) If the baked product meets the requirements prescribed in Sections 1 and 2 of this administrative regulation and this section, then the product labeling shall declare the name to be "whole wheat bread", "graham bread", "entire wheat bread", "whole wheat rolls", "graham rolls", "entire wheat rolls", "whole wheat buns", "graham buns", or "entire wheat buns", as applicable. [~~Whole wheat bread, graham bread, or entire wheat bread is baked in units each of which weighs one half (1/2) pound or more after cooling. Whole wheat rolls, graham rolls, entire wheat rolls, or whole wheat buns, graham buns, entire wheat buns are baked in units each of which weighs less than one half (1/2) pound after cooling.~~]

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 21, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner

(1) Type and number of entities affected: 129 bakeries.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the administrative process under KRS Chapter 13A is applicable.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. 0-5,000 square feet: $60; 5,001-30,000 square feet: $110; 30,001 or more square feet: $210.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. Permitting and inspection of bakeries will continue to be conducted by local health departments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Continues to mandate permitting and surveillance activities of bakeries.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 45:050. Food packaging and labeling.

RELATES TO: KRS Chapter 217 [~~217.005 to 217.215, 217.992~~]

STATUTORY AUTHORITY: KRS 194.050, 217.125 [~~211.090~~]

NECESSITY AND FUNCTION: [~~The Kentucky Food, Drug and Cosmetic Act,~~] KRS Chapter 217 [~~217.005 to 217.215 and 217.992~~] authorizes the Cabinet for Human Resources to regulate the labeling [~~misbranding~~] of foods. The purpose of this administrative regulation is to establish uniform labeling requirements for packaged foods.

[~~Section 1. Citation of Regulation. This regulation may be cited as the "State Food Packaging and Labeling Regulation."~~

~~Section 2. General Interpretations. (1) Compliance with applicable provisions of the Federal Food, Drug and Cosmetic Act and regulations adopted pursuant thereto relating to food packaging and labeling shall be deemed compliance with the provisions of this regulation, except as may otherwise be specifically provided by law.~~]

Section 1. Label Requirements. (1) Requirements [~~(2) Any requirement~~] contained in this administrative regulation that any word, statement, or other information appear on the label shall not be considered to be complied with unless the [~~such~~] word, statement, or information also appears on the outer container or wrapper of the retail package of the article, or the [~~such~~] information is easily legible by [~~virtue of~~] the transparency of the outer wrapper or container.

(2) If [~~Where~~] a consumer commodity is marketed in a multiunit retail package bearing the mandatory label information [~~as~~] required by this administrative regulation and the unit containers are not intended to be sold separately, the net weight placement requirement of Section 5(6) [~~6(6)~~] of this administrative regulation applicable to [~~such~~] unit containers shall be [~~is~~] waived if the units are in compliance with [~~all the other requirements of~~] this administrative regulation.

Section 2. [~~3.~~] Principal Display Panel. (1) The principal display panel for [~~as it applies to~~] food in package form shall be the [~~and as used in this regulation is that~~] part of a label [~~that is~~] most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(2) The principal display panel shall be large enough to accommodate all the [~~mandatory~~] label information clearly [~~required to be placed thereon by this regulation with clarity and conspicuousness~~] and without obscuring design, vignettes, or crowding.

(3) If [~~Where~~] packages bear alternate principal display panels, information required to be placed on the principal display panel shall be duplicated on each principal display panel.

(4) To obtain [~~For the purpose of obtaining~~] uniform type size in declaring the quantity of contents for all packages of substantially the same size, the area of the principal display panel [~~is the area of the side or surface that bears the principal display panel, which area~~] shall be:

(a) [~~(1)~~] In the case of a rectangular package, with [~~where~~] one (1) entire side [~~properly can be~~] considered to be the principal display panel side, the product of the height times the width of that side;

(b) [~~(2)~~] In the case of a cylindrical or nearly cylindrical container, forty (40) percent of the product of the height of the container times the circumference; and

(c) [~~(3)~~] In the case of any [~~otherwise~~] shaped container, forty (40) percent of the total surface of the container.

(5) If a [~~; provided, however, that where such~~] container presents an obvious principal display panel, such as the top of a triangular or circular package of cheese, the area of the principal display panel shall consist of the entire top surface.

(6) In determining the area of the principal display panel, exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

(7) For [~~In the case of~~] cylindrical or nearly cylindrical containers, information required [~~by this regulation~~] to appear on the principal display panel shall appear within that forty (40) percent of the circumference [~~which is~~] most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

Section 3. [~~4.~~] Statement of Identity. (1) The principal display panel of a food in package form shall bear as a [~~one of its~~] principal feature[~~s~~] a statement of the identity of the food.

(2) A [~~Such~~] statement of identity shall be in terms of:

(a) The name of the food; [~~now or hereafter specified in or required by any applicable Kentucky law or regulation; or, in the absence thereof;~~]

(b) The common or usual name of the food; or[~~, in the absence thereof;~~]

(c) A [~~An appropriate~~] descriptive term or, if [~~when~~] the nature of the food is obvious, a fanciful name commonly used by the public for that [~~such~~] food.

(3) If [~~Where~~] a food is marketed in various optional forms (whole, slices, diced, etc.), the particular form shall be considered to be a necessary part of the statement of identity and shall be [~~declared~~] in letters of a type size comparable [~~bearing a reasonable relation~~] to the size of the letters forming the other components of the statement of identity. [~~; except that~~] If the optional form is visible through the container or is depicted by an appropriate vignette, the particular form need not be included in the statement. This specification does not affect the required declarations of identity under definitions and standards for foods [~~promulgated~~] pursuant to KRS Chapter 217 [~~217.135~~].

(4) The statement of identity shall:

(a) Be presented in bold type on the principal display pane;

(b) [~~, shall~~] Be in a size reasonably related to the most prominent printed matter on the [~~such~~] panel; and

(c) [~~shall~~] Be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

Section 4. [5.] Name and Place of Business of Manufacturer, Packer, or Distributor. (1) The label of a food in packaged form shall distinctly specify [conspicuously] the name and place of business of the manufacturer, packer, or distributor.

(2) The requirement for declaration of the name of the manufacturer, packer, or distributor shall [be deemed to] be satisfied, in the case of a corporation, only by the actual corporate name, which may be preceded or followed by the name of the [particular] division of the corporation. For [In the case of] an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) If [Where] the food is not manufactured by the person whose name appears on the label, the name shall include [be qualified by] a phrase that reveals the connection that [such] person has with the [such] food; such as "Manufactured for _____", "Distributed by _____" [or any other wording that expresses the facts].

(4) The statement of the place of business shall include the street address, city, state, and zip code. [; however,] The street address may be omitted if it is shown in a current city directory or telephone directory. For [The requirement for inclusion of the zip code shall apply only to food labels developed or revised after the effective date of this regulation. In the case of] nonconsumer packages, the zip code shall appear either on the label or the labeling (including invoice).

(5) If a person manufactures, packs, or distributes a food at a place other than the [his] principal place of business, the label may state the principal place of business instead [in lieu] of the actual place where the [such] food was manufactured, [or] packed, or is to be distributed, unless the [such] statement would be misleading.

Section 5. [6.] Declaration of Net Quantity of Contents[; Exemptions]. (1) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents by [. This shall be expressed in the terms of] weight, measure, numerical count, or a combination of numerical count and weight or measure.

(a) The declaration [statement] shall be in terms of fluid measure if the food is liquid, or in terms of weight if the food is solid, semisolid, [or] viscous, or a mixture of solid and liquid; [except that such]

(b) The statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure.

(c) If there is a firmly established, general consumer usage and trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, it may be used. [Whenever the cabinet determines that an existing practice of declaring net quantity of contents by weight, measure, numerical count or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.]

(2) Statements of weight shall be in terms of avoirdupois pound and ounce.

(a) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and shall:

1. In the case of frozen food that is sold and consumed in a frozen state, express the volume at the frozen temperature.

2. In the case of refrigerated food that is sold in the refrigerated state, express the volume at forty (40) degrees Fahrenheit [(four (4) degrees Centigrade)].

3. In the case of other foods, express the volume at sixty-eight (68) degrees Fahrenheit [(twenty (20) degrees Centigrade)].

(b) Statements of dry measure shall be in terms of the U.S. Bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

(3) If [When] the declaration [of quantity of contents] by numerical count does not give [adequate] information as to the quantity of food in the package, it shall be combined with a [such] statement of weight, measure, or size of the individual units of the foods to [as will] provide that [such] information.

(4) The declaration [of quantity of contents] may contain common or decimal fractions.

(a) A common fraction shall be in terms of halves, quarters, eighths, 16ths, or 32nds; [except that]

(b) If there exists a firmly established, general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, it [they] may be used [employed].

(c) A common fraction shall be reduced to its lowest terms.

(d) A decimal fraction shall not be carried out to more than two (2) places.

(e) A statement that includes small fractions of an ounce shall [be deemed to] permit smaller variations than a statement that [one (1) which] does not include small [such] fractions of an ounce.

(5) The declaration [of quantity of contents] shall be located on the principal display panel of the label; [and with respect to] packages bearing alternate principal panels shall have the declaration [it shall be] duplicated on each principal display panel.

(6) The declaration [of quantity of contents] shall appear as a distinct item on the principal display panel, and shall be:

(a) Separated by at least a space equal to the height of the lettering used in the declaration from other printed label information appearing above or below the declaration and by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement from other printed label information appearing to the left or right of the declaration; and

(b) Placed [. It shall not include any term qualifying a unit of weight, measure, or count, such as "jumbo quart" and "full gallon," that tends to exaggerate the amount of the food in the container. It shall be placed on the principal display panel] within the bottom thirty (30) percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed. This requirement shall not apply to [; provided, that on] packages having a principal display panel of five (5) square inches or less, if [the requirements for placement within the bottom thirty (30) percent of the area of the label panel shall not apply when] the declaration [of net quantity of contents] meets the [other] requirements of this administrative regulation.

(7) The declaration [of quantity of contents] shall accurately reveal the quantity of food in the package, exclusive of wrappers and other material. [packed therewith; provided that] In the case of foods packed in containers designed to deliver the food under pressure, the declaration shall state the net quantity of the contents that will be expelled if [when] the instructions for use as shown on the container are followed. The propellant is included in the net quantity declaration.

(8) The declaration [of quantity of contents] shall appear in obvious [conspicuous] and easily legible boldface print or type in distinct contrast, [(]by typography, layout, color, embossing, or molding, [)] to other matter on the package; except [that] a declaration of net quantity blown, embossed, or molded on a glass or plastic surface shall be [is] permissible if [when] all label information is [so] formed on the surface. Requirements of [conspicuousness and] legibility shall include [the specifications that]:

(a) The ratio of height to width of the letter shall not exceed a differential of three (3) units to one (1) unit (no more than three (3) times as high as it is wide).

(b) Letter heights pertain to upper case or capital letters. If [When] upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(c) If [When] fractions are used, each component numeral shall meet one-half (1/2) the minimum height standards.

(9) The declaration [of quantity of contents] shall be in letters and numerals in a type size established in relationship to the area of the

principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the following type specifications:

(a) Not less than one-sixteenth (1/16) inch in height on packages the principal display panel [~~of which~~] has an area of five (5) square inches or less;

(b) Not less than one-eighth (1/8) inch in height on packages the principal display panel [~~of which~~] has an area of more than five (5) but not more than twenty-five (25) square inches;

(c) Not less than three-sixteenths (3/16) inch in height on packages the principal display [~~of which~~] has an area of more than twenty-five (25) but less [~~not more~~] than 100 square inches;

(d) Not less than one-fourth (1/4) inch in height on packages the principal display panel [~~of which~~] has an area of more than 100 square inches, except not less than one-half (1/2) inch in height if the area is more than 400 square inches.

(10) If [~~Where~~] the declaration is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in subsection (9)(a) through (d) of this section shall be increased by one-sixteenth (1/16) of an inch.

(11) On packages containing less than four (4) pounds or one (1) gallon and labeled in terms of weight or fluid measure:

(a) The declaration [~~of quantity of contents~~] shall be expressed both in ounces with identification by weight or by liquid measure and, if applicable (one (1) pound or one (1) pint or more), followed in parentheses by a declaration in pounds for weight units, with the [~~any~~] remainder in terms of ounces or common or decimal fractions of the pound (see examples set forth in subsection (14) [~~(13)~~](a) and (b) of this section), or in the case of liquid measure, in the largest whole units (quarts and pints, or pints, as appropriate) with the [~~any~~] remainder in terms of fluid ounces or common or decimal fractions of the pint or quart (see example in subsection (14) [~~(13)~~](c) and (d) of this section).

(b) If the [~~net quantity of contents~~] declaration appears on a random package, that is a package which is one (1) of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights and with no fixed weight pattern, it may, if [~~when~~] the net weight exceeds one (1) pound, be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two (2) decimal places. If [~~When~~] the net weight does not exceed one (1) pound, the declaration on the random package may be in decimal fractions of the pound in lieu of ounces (see example in subsection (14) [~~(13)~~](e) of this section).

(c) The declaration [~~of quantity of contents~~] may appear in more than one (1) line.

1. The term "net weight" shall be used if [~~when~~] stating the net quantity of contents in terms of weight.

2. [~~Use of~~] The terms "net" or "net contents" for [~~in terms of~~] fluid measure or numerical count is optional.

3. [~~It is sufficient to distinguish~~] Avoirdupois ounce may be distinguished from fluid ounce through association of terms; for example, "Net wt. 6 oz." or "6 oz. Net wt." and "6 fl. oz." or "Net contents 6 fl. oz."

(12) On packages containing four (4) pounds or one (1) gallon or more and labeled in terms of weight or fluid measure, the declaration [~~of quantity of contents~~] shall be expressed in pounds for weight units with the [~~any~~] remainder in terms of ounces or common or decimal fraction of the pound. [~~, or in the case of~~] Fluid measure[~~, it~~] shall be expressed in the largest whole unit (gallons followed by common or decimal fraction of a gallon) or by the next smaller whole unit or units (quarts, or quarts and pints) with the [~~any~~] remainder in terms of fluid ounces or common or decimal fractions of the pint or quart (see subsection (14) [~~(13)~~](f) of this section).

(13) The declaration shall not include a term qualifying a unit of weight, measure or count that tends to exaggerate the amount of food in the container, such as "jumbo quart" and "full gallon".

(14) Examples.

(a) A declaration of one and one-half (1 1/2) pounds weight shall be expressed as "Net Wt. 24 oz. (1 lb. 8 oz.)" or as "Net Wt. 24 oz. (1.5 lb.)."

(b) A declaration of three-fourths (3/4) pound avoirdupois weight shall be expressed as "Net Wt. 12 oz."

(c) A declaration of one (1) quart liquid measure shall be expressed as "Net Wt. 32 fl. oz. (1 qt.)."

(d) A declaration of one and three-fourths (1 3/4) quarts liquid measure shall be expressed as "Net contents 56 fluid ounces (1 quart 1 1/2 pints)" or as "Net 56 fluid oz. (1 qt. 1 pt. 8 oz.)," but not in terms of quart and ounce such as "Net 56 fluid oz. (1 quart 24 ounces)."

(e) On a random package, declaration of three-fourths (3/4) pound avoirdupois may be expressed as "Net Wt. .75 lb."

(f) A declaration of two and one-half (2 1/2) gallons liquid measure shall be expressed as "Net contents 2 1/2 gallons," "Net contents 2.5 gallons," or "Net contents 2 gallons 2 quarts", [~~and~~] not as "2 gallons 4 pints."

(15) [~~(14)~~] For quantities, the following abbreviations shall [~~and none other may~~] be used [~~employed~~] (periods and plural forms are optional): weight, wt.; pound, lb.; pint, pt.; fluid, fl.; ounce, oz.; gallon, gal.; and quart, qt.

(16) [~~(15) Nothing in~~] This section shall not prohibit supplemental declarations [~~statements~~] at locations other than the principal display panel describing in nondeceptive terms the net quantity of contents; [~~provided, that such~~]

(a) Supplemental declarations [~~statements of net quantity of contents~~] shall not include any term [~~qualifying a unit~~] of weight, measure, or count that tends to exaggerate the amount of the food contained in the package; for example, "jumbo quart" and "full gallon."

(b) Dual or combination declarations, [~~of net quantity of contents~~] as provided for in subsections (1), (3), and (11) of this section, (for example, combination of net weight plus numerical count, net contents plus dilution directions of a concentrate, etc.) shall [~~are~~] not be regarded as a supplemental declaration [~~net quantity statements~~] and shall [~~may~~] be located on the principal display panel.

(17) [~~(16)~~] A separate statement of the net quantity of contents in terms of the metric system shall [~~is~~] not be regarded as a supplemental declaration. A [~~statement and an accurate~~] statement [~~of the net quantity of contents~~] in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels.

(18) [~~(17)~~] The declaration [~~of net quantity of contents~~] shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. [~~Variations from stated quantity of contents shall not be unreasonably large.~~]

(19) [~~(18)~~] The declaration [~~of net quantity of contents~~] on pickles and pickle products, including relishes but excluding one (1) or two (2) whole pickles in clear plastic bags which may be declared by count, shall be expressed in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof.

(20) [~~(19)~~] On a multiunit retail package, a statement of the quantity of contents shall appear on the outside of the package and shall include the number of individual units, the quantity of each individual unit, and, in parentheses, the total quantity of contents of the multiunit package in terms of avoirdupois of fluid ounces.

(a) The [~~, except that such~~] declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof, as required by subsection (11)(a) of this section.

(b) A multiunit retail package may [~~thus~~] be properly labeled: "6-16 oz. bottles - (96 fl. oz.)" or "3-16 oz. cans - (net wt. 48 oz.)."

(c) [~~For the purpose of this section,~~] A multiunit retail package contains [~~is a package containing~~] two (2) or more individually packaged units of the identical commodity and in the same quantity, intended to be sold as part of the multiunit retail package but capable

of being individually sold in full compliance with all requirements of this administrative regulation.

(d) Open multiunit retail packages that do not obscure the number of units nor prevent examination of the labeling on each of the individual units are not subject to this subsection if the labeling of each individual unit complies with the requirements of subsections (6) and (9) of this section.

(e) The provisions of this section do not apply to [that] butter or margarine covered by the exemptions in Section 10 of this administrative regulation [subsections (10) and (11) of this section].

Section 6. [7.] Food Labeling; Number of Servings. (1) The label of a [any] package of a food which bears a representation as to the number of servings contained in a [such] package shall bear in immediate conjunction with the [such] statement, and in the same size type as [is] used for the [such] statement, a statement of the net quantity in terms of weight, measure, or numerical count of each [such] serving.

(2) The [; however, such] statement may be expressed in terms that differ from the terms used in the required statement of net quantity of contents (for example, cupfuls, tablespoonfuls[, etc.]) if the [when such] differing term is common to cookery and describes a constant quantity.

(3) The [Such] statement may not be misleading in any particular.

(4) A statement of the number of units in a package is not in itself a statement of the number of servings.

Section 7. [8.] Prominence of Required Statements. (1) A word, statement, or other information may lack [that] prominence pursuant to [and conspicuousness required by] KRS Chapter 217 [217.035(6)] by reason [(among other reasons)] of:

(a) The failure of a [such] word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(b) The failure of a [such] word, statement, or information to appear on two (2) or more parts or panels of the label, each having [of which has] sufficient space [therefor], and [each of which is so] designed [as] to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(c) [The] Failure of the label to extend over the area of the container or package available for the [such] extension[, so as] to provide sufficient label space for the prominent placing of a [such] word, statement or information;

(d) Insufficient [Insufficiency of] label space for the prominent placing of a [such] word, statement, or information resulting from the use of label space for any word, statement, design, or device which is not required [by or under authority of the Act] to appear on the label;

(e) Insufficient [Insufficiency of] label space for the prominent placing of a [such] word, statement, or information, resulting from the use of label space to give materially greater distinction [conspicuousness] of any other word, statement, or information, or to any design or device; or

(f) Smallness or style of type in which a [such] word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(2) No exemption depending on insufficiency of label space, pursuant to [as provided by] KRS Chapter 217 [217.035(5)(b) or (9)(b)] shall apply if the [such] insufficiency is caused by:

(a) [The] Use of label space for any word, statement, design, or device which is not required [by or under authority of the Act] to appear on the label;

(b) [The] Use of label space to give greater conspicuousness to any word, statement, or other information that is required by KRS 217.035(6); or

(c) [The] Use of label space for any representation in a foreign language.

(3) [All] Words, statements, and other information required [by or under authority of KRS 217.035] to appear on the label or labeling shall appear [thereon] in the English language. [; provided, however, that in the case of] Articles distributed solely [in the Commonwealth of Puerto Rico or] in a territory where the predominant language is one other than English, the predominant language may be substituted for English.

(4) If the label contains any representation in a foreign language, all words, statements, and other information required pursuant to [by or under authority of] KRS 217.035 to appear on the label shall appear [thereon] in the foreign language.

Section 8. [9.] Designation of Ingredients. (1) The name of an ingredient (except a spice, flavoring, or coloring which is an ingredient of a food other than one sold as a spice, flavoring, or coloring), shall be a specific name and not a collective name. If an ingredient, which itself contains two (2) or more ingredients, conforms to a definition and standard of identity, the [prescribed by regulations under KRS 217.135, such] ingredient may be designated on the label of that [such] food by the name specified in the definition and standard, supplemented[, in case such regulations require the naming of optional ingredients present in such ingredient,] by a statement showing the optional ingredients which are present in the [such] ingredient.

(2) No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring[, as the case may be, within the meaning of such term as commonly understood by consumers]. Coloring shall not include a [any] bleaching substance.

(3) An ingredient which is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as spice and coloring, or flavoring and coloring, [as the case may be,] unless the [such] ingredient is designated by its specific name.

(4) In the case of fabricated foods, including mixtures of food ingredients, with [where] the proportion of an [expensive] ingredient or ingredients present having [has] a [material] bearing on price or consumer acceptance, the label of the [such] food shall bear a quantitative statement of the [such] ingredient if the label without the [such] declaration may create an erroneous impression that the [such] ingredient or ingredients are present in an amount greater than is actually the case.

(a) [For example,] A label designation of identity as "cottonseed oil and olive oil" for a mixture containing eighty (80) percent or more of cottonseed oil would require a declaration of the percent of olive oil present.

(b) [Similarly,] A representation by vignette or statement of identity that a breakfast syrup is made from a mixture of sugar syrup and maple syrup would necessitate a quantitative declaration of the maple sugar syrup unless more than twenty (20) percent maple sugar syrup is present.

(5) In the case of an assortment of different items of food, if [when] variations in the items that make up different packages packed from the [such] assortment normally occur in good packing practice and if [when such] variations result in variations in the ingredients in different packages, the [such] food shall be exempt from compliance with the requirements of KRS 217.035(9)(b) with respect to an [any] ingredient that is not common to all packages. The [Such] exemption[, however,] shall be on the condition that the label shall bear, in conjunction with the names of [such] ingredients as are common to all packages, a statement in terms that are [as informative as practicable and that are] not misleading indicating that other ingredients may be present.

(6) A food shall be exempt while held for sale from the requirements of KRS 217.035(9)(b) if the [said] food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with [either] the labeling of the bulk container plainly in

view or a counter card, sign, or other appropriate device bearing clearly [~~prominently and conspicuously~~] the information required to be stated on the label pursuant to KRS 217.035(9)(b).

(7) Ingredients shall be listed by common or usual name in order of decreasing predominance.

(a) The declaration shall be presented on an [~~any appropriate~~] information panel in adequate type size, without obscuring design, vignettes, or crowding.

(b) The entire ingredient statement shall appear on a single panel of the label.

Section 9. [~~10.~~] Artificial Flavoring or Coloring, Chemical Preservatives. (1) A statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food, [~~or~~] on its container or wrapper, or on any two (2) or all of these, as may be necessary to render the [~~such~~] statement likely to be read by the [~~ordinary~~] individual under customary conditions of purchase and use of the [~~such~~] food.

(2) A food shall be exempt from compliance with the requirements of KRS 217.035(11) if it is not in package form and the units thereof are so small that a statement of artificial flavoring, artificial coloring, or chemical preservative, as the case may be, cannot be placed on the [~~such~~] units clearly [~~with such conspicuousness~~] as to render it likely to be read by the [~~ordinary~~] individual under customary conditions of purchase and use.

(3) A food shall be exempt while held for sale from the requirements of KRS 217.035(11) if the [~~said~~] food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with either the labeling of the bulk container plainly in view or a counter card, sign, or other appropriate device clearly stating [~~bearing prominently and conspicuously~~] the information required to be stated on the label pursuant to KRS 217.035(11).

(4) A fruit or vegetable shall be exempt from compliance with the requirements of KRS 217.035(11) with respect to a chemical preservative applied to the fruit or vegetable as a pesticide chemical prior to harvest.

Section 10. [~~11.~~] Exemptions from Required Label Statements. The following exemptions are granted from label statements required by this administrative regulation:

(1) While held for sale, a food shall be exempt from the required declaration of net quantity or contents [~~specified in this regulation~~] if the [~~said~~] food is received in bulk containers at a retail establishment and is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser's order.

(2) Random food packages, as in Section 5 [~~6~~](11) of this administrative regulation, bearing labels declaring net weight shall be exempt from the type size, dual declaration, and placement requirements of Section 5 [~~6~~] of this administrative regulation if the [~~accurate~~] statement of net weight is obvious [~~presented conspicuously~~] on the principal display panel of the package.

(3) Individual serving-size packages of foods containing less than one-half (1/2) ounce or less than one-half (1/2) fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents [~~specified in this regulation~~].

(4) Individually wrapped pieces of candy [~~"penny candy"~~] and other confectionery of less than one-half (1/2) ounce net weight per individual piece shall be exempt from [~~the~~] labeling requirements if [~~of this regulation when~~] the container in which the [~~such~~] confectionery is shipped is in conformance with the labeling requirements of this administrative regulation. If the [~~Similarly, when such~~] confectionery items are sold in bags or boxes, the [~~such~~] items shall be exempt from the labeling requirements of this administrative regulation, including the required declaration of net quantity of contents if [~~specified in this regulation when~~] the declaration on the bag or box meets the requirements of this administrative regulation.

(5) Soft drinks packaged in bottles shall be exempt from the placement requirements for the statement of identity prescribed by Section 3 [~~4~~](1) and (4) of this administrative regulation if the [~~such~~] statement is obvious [~~appears conspicuously~~] on the bottle closure. If [~~When such~~] soft drinks are marketed in a multiunit retail package, the multiunit retail package shall be exempt from the statement of identity declaration requirements prescribed by Section 3 [~~4~~] of this administrative regulation if the statement of identity on the unit container is not obscured by the multiunit retail package.

(a) A multiunit retail package for soft drinks shall be exempt from the declaration regarding name and place of business required by Section 4 [~~5~~] of this administrative regulation if the package does not obscure the declaration on unit containers or if it bears a statement that the declaration can be found on the unit containers and the declaration on the unit containers complies with Section 4 [~~5~~] of this administrative regulation. The declaration required by Section 4 [~~5~~] of this administrative regulation may appear on the top or side of the closure of bottled soft drinks, if the statement is obvious [~~conspicuous~~] and [~~easily~~] legible.

(b) Soft drinks packaged in bottles which display other required label information only on the closure shall be exempt from the placement requirements for the declaration of contents prescribed by Section 5 [~~6~~](6) of this administrative regulation if the required content declaration is blown, formed, or molded into the surface of the bottle near [~~in close proximity to~~] the closure.

(6) Ice cream, French ice cream, ice milk, fruit sherbets, water ices, quiescently frozen confections, with or without ingredients, special dietary frozen desserts, and products made in semblance of the foregoing, if [~~when~~] measured by and packaged in one-half (1/2) liquid pint and one-half (1/2) gallon measure containers, [~~as defined in the "Measure Container Code of National Bureau of Standards Handbook 44"~~] are exempt from the requirements of Section 5 [~~6~~](2)(a) of this administrative regulation to the extent that net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces [~~(or two (2) quarts)~~] may be expressed as one-half (1/2) pint and one-half (1/2) gallon, respectively.

(a) The foods named in this subsection, if [~~when~~] measured by and packaged in one (1) liquid pint, one (1) liquid quart, and one-half (1/2) gallon measure containers, [~~as defined in the "Measure Container Code of National Bureau of Standards Handbook 44"~~] are exempt from the dual net contents declaration requirement of Section 5 [~~6~~](11) of this administrative regulation.

(b) The foods named in this subsection, if [~~when~~] measured by and packaged in one-half (1/2) liquid pint, one (1) liquid pint, one (1) liquid quart, one-half (1/2) gallon, and one (1) gallon measure containers, [~~as defined in the "Measure Container Code of National Bureau of Standards Handbook 44"~~] are exempt from the requirement of Section 5 [~~6~~](6)(b) of this administrative regulation [~~that the declaration of net contents be located within the bottom thirty (30) percent of the principal display panel~~].

(7) Milk, cream, light cream, coffee or table cream, whipping cream, light whipping cream, heavy [~~or heavy~~] whipping cream, sour or cultured sour cream, half and half, sour or cultured half and half, reconstituted or recombined milk and milk products, concentrated milk and milk products, skim or skimmed milk, vitamin D milk and milk products, fortified milk and milk products, homogenized milk, flavored milk and milk products, buttermilk, cultured buttermilk, cultured milk or cultured whole buttermilk, low-fat milk (five-tenths (0.5) to two (2.0) percent butterfat), and acidified milk and milk products, if [~~when~~] packaged in containers of eight (8) and sixty-four (64) fluid ounce capacity, are exempt from the requirements of Section 5 [~~6~~](2)(a) of this administrative regulation to the extent that net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces [~~(or two (2) quarts)~~] may be expressed as one-half (1/2) pint and one-half (1/2) gallon, respectively.

(a) The products listed in this subsection, if [~~when~~] packaged in glass or plastic containers of one-half (1/2) pint, one (1) pint, one (1)

quart, one-half (1/2) gallon, and one (1) gallon capacities are exempt from the placement requirement of Section 5 [6](6)(b) of this administrative regulation [~~that the declaration of net contents be located within the bottom thirty (30) percent of the principal display panel~~], if [~~provided that~~] other required label information is clearly [~~conspicuously~~] displayed on the cap or outside closure and the required net quantity of contents declaration is clearly [~~conspicuously~~] blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(b) The products listed in this subsection, if [~~when~~] packaged in containers of one (1) pint, one (1) quart, and one-half (1/2) gallon capacities are exempt from the dual contents declaration requirement of Section 5 [6](11) of this administrative regulation.

(8) Wheat flour products packaged:

(a) In conventional two (2), five (5), ten (10), twenty-five (25), fifty (50), and 100 pound packages are exempt from the placement requirement of Section 5 [6](6)(b) of this administrative regulation [~~that the declaration of net contents be located within the bottom thirty (30) percent of the area of the principal display panel of the label~~]; and

(b) In conventional two (2) pound packages are exempt from the dual net-contents declaration requirements of Section 5 [6](11) of this administrative regulation provided the quantity of contents is expressed in pounds.

(9) Shell eggs packaged:

(a) Twelve (12) shell eggs packaged in a carton designed to hold one (1) dozen eggs and designed to permit the division of the [~~such~~] carton by the retail customer at the place of purchase into two (2) portions of one-half (1/2) dozen eggs each are exempt from the labeling requirements of this administrative regulation with respect to each portion of the [~~such~~] divided carton if the carton, [~~when~~] undivided, is in conformance with [~~the~~] labeling requirements of this administrative regulation.

(b) Twelve (12) shell eggs packaged in a carton designed to hold one (1) dozen eggs are exempt from the placement requirements for the declaration of contents prescribed by Section 5 [6](6) of this administrative regulation if the required content declaration is [~~otherwise~~] placed on the principal display panel of the [~~such~~] carton and if, in the case of [~~such~~] cartons designed to permit division by retail customers into two (2) portions of one-half (1/2) dozen eggs each, the required content declaration is placed on the principal display panel in such a manner that the context of the content declaration is destroyed upon division of the carton.

(10) Butter in eight (8) ounce and in one (1) pound packages are exempt from the requirements of Section 5 [6](6)(b) of this administrative regulation [~~that the net contents declaration be placed within the bottom thirty (30) percent of the area of the principal display panel~~]; and

(a) [~~In~~] One (1) pound packages are [~~is~~] exempt from the requirements of Section 5 [6](11)(a) of this administrative regulation that the [~~such~~] declaration be in terms of ounces and pounds, to permit declaration of "1 pound" or "one pound;" and

(b) [~~In~~] four (4) ounce, eight (8) ounce, and one (1) pound packages with continuous label copy wrapping are [~~is~~] exempt from the requirements of Sections 3 [4](4) and 5 [6](6) of this administrative regulation that the statement of identity and net contents declaration appear in lines generally parallel to the base on which the package rests as it is designed to be displayed, if [~~provided~~] that [~~such~~] statement and declaration are not so positioned on the label as to be misleading or difficult to read as the package is customarily displayed at retail.

(11) Margarine and imitations thereof [~~regulated under the federal act~~] in one (1) pound rectangular packages, except for packages containing whipped or soft margarine or packages that contain more than four (4) sticks, are exempt from the requirements of Section 5 [6](6)(b) of this administrative regulation [~~that the declaration of the next quantity of contents appear within the bottom thirty (30) percent of the principal display panel~~] and from the requirement of Section 5 [6](11)(a) of this administrative regulation that the [~~such~~] declaration be expressed both in ounces and in pounds to permit declaration of "1 pound" or "one pound," if [~~provided~~] an accurate statement of net weight appears clearly [~~conspicuously~~] on the principal display panel of the package.

(12) Corn flour and related products packaged in conventional five (5), ten (10), twenty-five (25), fifty (50) and 100 pound bags are exempt from the placement requirement of Section 5 [6](6)(b) of this administrative regulation [~~that the declaration of net contents be located within the bottom thirty (30) percent of the area of the principal display panel of the label~~].

(13) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water if [~~when~~] packaged in glass or plastic containers of one-half (1/2) pint, one (1) pint, one (1) quart, one-half (1/2) gallon, and one (1) gallon capacities are exempt from the placement requirement of Section 5 [6](6)(b) of this administrative regulation if [~~that the declaration of net contents be located within the bottom thirty (30) percent of the principal display panel; provided that~~] other required label information is clearly [~~conspicuously~~] displayed on the cap or outside closure and the required net quantity of contents declaration is clearly [~~conspicuously~~] blown, formed, or molded into or permanently applied to that part of the glass or plastic container [~~that is~~] at or above the shoulder of the container.

(a) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water if [~~when~~] packaged in glass, plastic, or paper (fluid milk type) containers of one (1) pint, one (1) quart, and one-half (1/2) gallon capacities are exempt from the dual net contents declaration requirements of Section 5 [6](11) of this administrative regulation.

(b) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water if [~~when~~] packaged in glass, plastic, or paper (fluid milk type) containers of eight (8) and sixty-four (64) fluid ounce capacity, are exempt from the requirements of Section 5 [6](2)(a) of this administrative regulation to the extent that net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces (or two (2) quarts) may be expressed as one-half (1/2) pint (or half pint) and one-half (1/2) gallon (or half gallon), respectively.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 18, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner

(1) Type and number of entities affected: 500 food manufacturing facilities and 2600 retail deli establishments.

(a) Direct and indirect costs or savings to those affected: The proposed amendment provides revisions for clarity and does not have an impact upon costs or savings.

1. First year:

2. Continuing costs or savings: The proposed amendment will result in no continuing costs or savings.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment will not result in additional reporting or paperwork requirements.

(2) Effects on the promulgated administrative body: The proposed amendment will have no effect upon the promulgating administrative body.

(a) Direct and indirect costs or savings: The proposed amendment will result in no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: There will not be continuing costs or savings associated with the proposed amendment.

3. Additional factors increasing or decreasing costs: The proposed amendment will result in no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment will not result in additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: The proposed amendment will have no effect upon the state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the administrative process under KRS Chapter 13A is applicable.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: The proposed amendment will not result in conflict, overlapping or duplication.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because no revenue is involved and all requirements apply equally to all establishments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. Permitting and inspection of food manufacturing facilities and retail deli establishments by local health departments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Mandates the labeling of food products manufactured by retail delis and food manufacturing facilities.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 45:060. Cosmetic packaging and labeling.

RELATES TO: KRS Chapter 217 [~~217.005 to 217.215, 217.992~~]
STATUTORY AUTHORITY: KRS 194.050, 217.125 [~~211.090~~]
NECESSITY AND FUNCTION: [~~The Kentucky Food, Drug and Cosmetic Act,~~] KRS Chapter 217 [~~217.005 to 217.215 and 217.992~~] authorizes the Cabinet for Human Resources to regulate the misbranding of cosmetics. The purpose of this administrative regulation is to establish uniform labeling requirements for packaged cosmetics.

[~~Section 1. Citation of Regulation. This regulation may be cited as the "State Cosmetic Packaging and Labeling Regulation."~~]

Section 1. [~~2.~~] General Package Requirements [~~Interpretations~~]. (1) A [~~Compliance with applicable provisions of the Federal Food, Drug and Cosmetic Act and regulations adopted pursuant thereto, relating to cosmetic packaging and labeling, shall be deemed in compliance with the provisions of this regulation, except as may otherwise be specifically provided by law.~~

~~(2)~~] [~~Any~~] requirement contained in this administrative regulation that any word, statement, or other information appear on the label shall not be considered to be complied with unless the [~~such~~] word, statement, or information also appears on the outer container or wrapper of the retail package of the article, or the [~~such~~] information is easily legible by [~~virtue of~~] the transparency of the outer wrapper or container.

(2) If [~~Where~~] a consumer commodity is marketed in a multiunit retail package bearing the mandatory label information [~~as~~] required by this administrative regulation and the unit containers are not intended to be sold separately, the net weight placement on the [~~applicable to such unit~~] containers shall be [~~is~~] waived if the units are in compliance with [~~all the other requirements of~~] this administrative regulation.

Section 2. [~~3.~~] Cosmetic Package [~~Definition~~]. (1) As used in this administrative regulation, a package is a [~~any~~] container or wrapper enclosing a [~~in which any~~] cosmetic [~~is enclosed~~] for use in the delivery or display to retail purchasers, excluding [~~but does not include~~]:

(a) [~~(1)~~] Shipping containers or wrappings used solely for the transportation of a [~~any~~] cosmetic in bulk or in quantity to manufacturers;

(b) [~~(2)~~] Shipping containers or outer wrappings used by retailers to ship or deliver a [~~any~~] cosmetic to retail customers if [~~such~~] containers and wrappings bear no printed matter pertaining to any particular commodity; and [~~or~~]

(c) [~~(3)~~] Containers used for tray pack displays in retail establishments.

(2) [~~(4)~~] Transparent wrappers or containers that [~~which~~] do not bear written, printed, or graphic matter obscuring the label information required by this administrative regulation are exempt from cosmetic package requirements.

[~~(5) Any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.~~]

Section 3. [~~4.~~] Principal Display Panel. (1) The principal display panel for [~~as it applies to~~] cosmetics in package form shall be the [~~and as used in this regulation is that~~] part of a label [~~that is~~] most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(2) The principal display panel shall be large enough to accommodate all the [~~mandatory~~] label information clearly [~~required to be placed thereon by this regulation with clarity and conspicuousness~~] and without obscuring designs, vignettes, or crowding.

(3) If [~~Where~~] packages bear alternate principal display panels, information required to be placed on the principal display panel shall be duplicated on each principal display panel.

(4) To obtain [~~For the purpose of obtaining~~] uniform type size in declaring the quantity of contents of all packages of substantially the same size, the area of the principal display panel [~~is the area of the side or surface that bears the principal display panel, which area~~]

shall be:

(a) In the case of a rectangular package, with [where] one (1) entire side [properly can be] considered to be the principal display panel side, the product of the height times the width of that side.

(b) In the case of a cylindrical or nearly cylindrical container, forty (40) percent of the product of the height of the container times the circumference. [; and]

(c) In the case of any other shape of container, forty (40) percent of the total surface of the container.

(5) If the [; provided, however, that where such] container presents an obvious principal display, panel such as the top of a triangular or circular package, the area of the principal display panel shall consist of the entire top surface.

(6) [(2)] In determining the area of the principal display panel, exclude tops, bottoms, flanges at the tops and bottoms of cans, and shoulders and necks of bottles or jars.

(7) For [In the case of] cylindrical or nearly cylindrical containers, information required [by this regulation] to appear on the principal display panel shall appear within that forty (40) percent of circumference [which is] most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

Section 4. [5.] Statement of Identity. (1) The principal display panel of a cosmetic in package form shall bear as a [one (1) of its] principal feature[s] a statement of the identity of the commodity.

(2) A [Such] statement of identity shall be in terms of:

(a) The common or usual name of the cosmetic; [or]

(b) A [An appropriate] descriptive name or, if [when] the nature of the cosmetic is obvious, a fanciful name understood by the public to identify the [such] cosmetic; or

(c) An [appropriate] illustration or vignette representing the intended cosmetic use.

(3) The statement of identity shall:

(a) Be presented in bold type on the principal display panel;

(b) [shall] Be in a size reasonably related to the most prominent printed matter on the [such] panel; and

(c) [shall] Be in lines generally paralleled to the base on which the package rests as it is designed to be displayed.

Section 5. [6.] Name and Place of Business of Manufacturer, Packer, or Distributor. (1) The label of a cosmetic in package form shall distinctly specify [conspicuously] the name and place of business of the manufacturer, packer, or distributor.

(2) The requirement for declaration of the name of the manufacturer, packer, or distributor shall be [deemed to be] satisfied in the case of a corporation only by the actual corporate name, which may be preceded or followed by the name of the [particular] division of the corporation. Abbreviations for "Company," "Incorporated," etc., may be used and "The" may be omitted. For [In the case of] an individual, partnership or association, the name under which the business is conducted shall be used.

(3) If [Where] the cosmetic is not manufactured by the person whose name appears on the label, the name shall include [be qualified by] a phrase that reveals the connection that [such] person has with the [such] cosmetic; such as "Manufactured for _____", "Distributed by _____" [or any wording that expresses the facts].

(4) The statement of the place of business shall include the street address, city, state, and zip code. [However,] The street address may be omitted if it is shown in a current city directory or telephone directory. [The requirement for inclusion of the zip code shall apply only to consumer commodity labels developed or revised after the effective date of this regulation. In the case of] For nonconsumer packages, the zip code shall appear either on the label or the labeling (including the invoice).

(5) If a person manufactures, packs, or distributes a cosmetic at a place other than the [his] principal place of business, the label may state the principle place of business instead [in lieu] of the actual place where the [such] cosmetic was manufactured, [or] packed, or is to be distributed, unless the [such] statement would be misleading.

Section 6. [7.] Declaration of Net Quantity of Contents. (1) The label of a cosmetic in package form shall bear a declaration of the net quantity of contents by [. This shall be expressed in terms of] weight, measure, numerical count, or a combination of numerical count and weight or measure.

(a) The declaration [statement] shall be in terms of fluid measure if the cosmetic is liquid, or in terms of weight if the cosmetic is solid, semisolid, or viscous, or a mixture of solid and liquid.

(b) If there is a firmly established, general consumer usage and the trade custom of declaring the net quantity of a cosmetic by numerical count, linear measure, or measure of area, it [such respective term] may be used.

(c) If there is a firmly established, general consumer usage and trade custom of declaring the contents of a liquid cosmetic by weight, or a solid, semisolid, or viscous cosmetic by fluid measure, it may be used. [Whenever the cabinet determines for a specific packaged cosmetic that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination of these does not facilitate value comparisons by consumers, it shall by regulation designate the appropriate term or terms to be used for such cosmetic.]

(2) Statements of weight shall be in terms of avoirdupois pound and ounce. Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivision thereof and shall express the volume at sixty-eight (68) degrees Fahrenheit [(twenty (20) degrees Centigrade)].

(3) If [When] the declaration [of quantity of contents] by numerical count, linear measure, or measure of area does not give accurate information as to the quantity of cosmetic in the package, it shall be combined with a [augmented by such] statement by weight, measure, [or] size of the individual units, or the total weight or measure of the cosmetic that [as] will give the [such] information.

(4) The declaration may contain common or decimal fractions.

(a) A common fraction shall be in terms of halves, quarters, eighths, 16ths, or 32nds.

(b) [; except that] If there exists a firmly established, general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, it [they] may be used [employed].

(c) A common fraction shall be reduced to its lowest terms.

(d) A decimal fraction shall not be carried out to more than two (2) places.

(e) A statement that includes small fractions of an ounce shall [be deemed to] permit smaller variations than a statement that [one (1) which] does not include small [such] fractions of an ounce.

(5) The declaration shall be located on the principal display panel of the label; [with respect to] packages bearing alternate principal display panels shall have the declaration [it shall be] duplicated on each principal display panel. [; provided, that:]

(a) The principal display panel of a cosmetic marketed in a "boudoir-type" container, including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of one-fourth (1/4) ounce or less, may be considered to be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information [as required by this regulation], but the type size of the declaration [net quantity of contents statement] shall be governed by the dimensions of the decorative container; and

(b) The principal display panel of a cosmetic marketed on a display card to which the immediate container is affixed may be considered to be the display panel of the card, but [and] the type size of the declaration shall be [net quantity of contents statement is] governed by the dimensions of the display card.

(6) The declaration shall appear as a distinct item on the principal

display panel, and shall be:

(a) Separated by at least a space equal to the height of the lettering used in the declaration from other printed label information appearing above or below the declaration and by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement from other printed label information appearing to the left or right of the declaration; and

(b) Placed [~~. It shall not include any term qualifying a unit of weight, measure, or count, such as "giant pint" and "full quart," that tends to exaggerate the amount of the cosmetic in the container. It shall be placed on the principal display panel~~] within the bottom thirty (30) percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed, except:

1. [~~; provided, that:~~

~~(a)~~] On packages having a principal display panel of five (5) square inches or less, the requirement for placement within the bottom thirty (30) percent of the area of the label panel shall not apply [~~when the declaration of net quantity of contents meets the other requirements of this regulation~~]; and

2. [~~(b)~~] In the case of a cosmetic that is marketed with both outer and inner retail containers bearing the mandatory label information [~~required by this regulation~~], and the inner container is not intended to be sold separately, the net quantity of contents placement requirement of this section applicable to the [~~such~~] inner container is waived.

(7) The declaration shall accurately reveal the quantity of cosmetic in the package exclusive of wrappers and other material, except: [~~packed therewith; provided that:~~]

(a) In the case of cosmetics packed in containers designed to deliver the cosmetic under pressure, the declaration shall state the net quantity of the contents that will be expelled if [~~when~~] the instructions for use as shown on the container are followed. The propellant is included in the net quantity declaration; and

(b) In the case of a package which contains the integral components making up a complete kit, and [~~which~~] is designed to deliver the components in the manner of an application (for example, a home permanent wave kit), the declaration may state the net quantity of the contents in nondescriptive terms of the number of applications available in the kit if [~~when~~] the instructions for use as shown on the container are followed.

(8) The declaration shall appear in obvious [~~conspicuous~~] and easily legible boldface print or type in distinct contrast, by typography, layout, color, embossing, or molding, to other matter on the package; except [~~that~~] a declaration of net quantity blown, embossed, or molded on a glass or plastic surface shall be [~~is~~] permissible if [~~when~~] all label information is [~~so~~] formed on the surface. Requirements of [~~conspicuousness and~~] legibility shall include [~~the specification that~~]:

(a) The ratio of height to width of the letter shall not exceed a differential of three (3) units to one (1) unit (no more than three (3) times as high as it is wide).

(b) Letter heights pertain to upper case or capital letters. If [~~When~~] upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(c) If [~~When~~] fractions are used, each component numeral shall meet one-half (1/2) the minimum height standards.

(9) The declaration shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the following type specifications:

(a) Not less than one-sixteenth (1/16) inch in height on packages the principal display panel [~~of which~~] has an area of five (5) square inches or less.

(b) Not less than one-eighth (1/8) inch in height on packages the principal display panel [~~of which~~] has an area of more than five (5) but less [~~not more~~] than twenty-five (25) square inches.

(c) Not less than three-sixteenths (3/16) inch in height on packages the principal display panel [~~of which~~] has an area of more than twenty-five (25) but less [~~not more~~] than 100 square inches.

(d) Not less than one-fourth (1/4) inch in height on packages the principal display panel [~~of which~~] has an area of more than 100 square inches, except not less than one-half (1/2) inch in height if the area is more than 400 square inches.

(10) If [~~Where~~] the declaration is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in subsection (9)(a) through (d) of this section shall be increased by one-sixteenth (1/16) of an inch.

(11) On packages containing less than four (4) pounds or one (1) gallon and labeled in terms of weight of fluid measure:

(a) The declaration shall be expressed both in ounces with identification by weight or by liquid measure and, if applicable (one (1) pound or one (1) pint or more), followed in parentheses by a declaration in pounds for weight units, with the [~~any~~] remainder in terms of ounces or common or decimal fractions of the pound (see example set forth in subsection (14) [~~(13)~~](a) and (b) of this section), or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with the [~~any~~] remainder in terms of fluid ounces or common or decimal fractions of the pint or quart (see example in subsection (14) [~~(13)~~](c) and (d) of this section). Net weight or fluid measure of less than one (1) ounce shall be expressed in common or decimal fractions of the respective ounce and not in drams.

(b) The declaration may appear in more than one (1) line.

1. The term "net weight" shall be used if [~~when~~] stating the net quantity of contents in terms of weight.

2. [~~Use of~~] The terms "net" or "net contents" for [~~in terms of~~] fluid measure or numerical count is optional.

3. [~~It is sufficient to distinguish~~] Avoirdupois ounce may be distinguished from fluid ounce through association of terms; for example, "net wt. 6 oz." or "6 oz. net wt." and "net contents 6 fl. oz." or "6 fl. oz."

(12) On packages containing four (4) pounds or one (1) gallon or more and labeled in terms of weight or fluid measure, the declaration shall be expressed in pounds for weight units with the [~~any~~] remainder in terms of ounces or common or decimal fractions of the pound. [~~; in the case of~~] Fluid measure[~~, it~~] shall be expressed in the largest whole unit (gallons, followed by common or decimal fractions of a gallon) or by the next smaller whole unit or units (quarts or quarts and pints) with the [~~any~~] remainder in terms of fluid ounces or common or decimal fractions of the pint or quart (see example in subsection (14) [~~(13)~~] of this section).

(13) The declaration shall not include a term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the cosmetic in the container, such as "giant pint" and "full quart."

(14) Examples.

(a) A declaration of one and one-half (1 1/2) pounds weight shall be expressed as "Net wt. 24 oz. (1 lb. 8 oz.)", "Net wt. 24 oz. (1 1/2 lb.)", or "Net wt. 24 oz. (1.5 lb.)."

(b) A declaration of three-fourths (3/4) pound avoirdupois weight shall be expressed as "Net wt. 12 oz."

(c) A declaration of one (1) quart liquid measure shall be expressed as "Net contents 32 fl. oz. (1 qt.)."

(d) A declaration of one and three-fourths (1 3/4) quarts liquid measure shall be expressed as "Net contents 56 fl. oz. (1 qt. 1 1/2 pt.)" or "Net contents 56 fl. oz. (1 qt. 1 pt. 8 oz.)", but not in terms of quart and ounce such as "Net contents 56 fl. oz. (1 qt. 24 oz.)."

(e) A declaration of two and one-half (2 1/2) gallons liquid measure shall be expressed in the alternative as "net contents 2 gal. 2 qt.", [~~and~~] not as "2 gal. 4 pt."

(15) [~~(14)~~] For quantities, the following abbreviations shall [~~and none other may~~] be used [~~employed~~] (periods and plural forms are optional): weight, wt.; gallon, gal,; square, sq.; quart, qt.; fluid, fl.; pint, pt.; yard, yd.; ounce, oz.; feet or foot, ft.; pound, lb.; inch, in.

(16) [~~(15)~~] On packages labeled in terms of linear measure, the declaration shall be expressed both in terms of inches and, if applicable (one (1) foot or more), the largest whole units (yards, yards and feet, feet). The declaration in terms of the largest whole units shall be in parentheses following the declaration in terms of inches and the [~~any~~] remainder shall be in terms of inches or common or decimal fractions of the foot or yard; for [~~.~~] example,[~~s are~~] "86 inches (2 yd. 1 ft. 2 inches)," "90 inches (2 1/2 yd.)" "30 inches (2.5 yd.)" [~~etc~~].

(17) [~~(16)~~] On packages labeled in terms of area measure, the declaration shall be expressed in terms of square inches and, if applicable (one (1) square foot or more), the largest whole square unit (square yards, square yards and square feet, square feet). The declaration in terms of the largest whole units shall be in parentheses following the declaration in terms of square inches and the [~~any~~] remainder shall be in terms of square inches or common or decimal fractions of the square foot or square yard; for example, "158 sq. inches (1 sq. ft. 14 sq. inches)" [~~etc~~].

(18) [~~(17) Nothing in~~] This section shall not prohibit supplemental declarations [~~statements~~] at locations other than the principal display panel describing in nondeceptive terms the net quantity of contents.

(a) [~~, provided that such~~] Supplemental declarations [~~statements of net quantity of contents~~] shall not include any term [~~qualifying a unit~~] of weight, measure, or count that tends to exaggerate the amount of the cosmetic contained in the package; for example, "giant pint" and "full quart."

(b) Dual or combination declarations, [~~of net quantity of contents~~] as provided for in subsections (1), (3), and (11) of this section (for example, a combination of net weight plus numerical count), shall [~~are~~] not be regarded as a supplemental declaration [~~net quantity statements~~] and shall be located on the principal display panel.

(19) [~~(18)~~] A separate statement of the net quantity of contents in terms of the metric system shall [~~is~~] not be regarded as a supplemental declaration. A [~~statement and an accurate~~] statement [~~of the net quantity of contents~~] in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels.

(20) [~~(19)~~] The declaration [~~of net quantity of contents~~] shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. [~~Variations from stated quantity of contents shall not be unreasonably large.~~]

Section 7. [~~8.~~] Prominence of Required Statements. (1) A word, statement, or other information required may lack [~~that~~] prominence pursuant to [~~and conspicuousness required by~~] KRS Chapter 217 [~~217.095(3)~~] by reason [~~(among other reasons)~~] of:

(a) [~~The~~] Failure of a [~~such~~] word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(b) [~~The~~] Failure of a [~~such~~] word, statement, or information to appear on two (2) or more parts or panels of the label, each having [~~of which has~~] sufficient space [~~therefor~~], and [~~each of which is so~~] designed [~~as~~] to render it likely to be, under customary conditions or purchase, the part or panel displayed;

(c) [~~The~~] Failure of the label to extend over the area of the container or package available for the [~~such~~] extension[~~, so as~~] to provide sufficient label space for the prominent placing of a [~~such~~] word, statement, or information;

(d) Insufficient label space, [~~Insufficiency of labeling,~~] for the prominent placing of a [~~such~~] word, statement, or information, resulting from the use of label space for any word, statement, design, or device which is not required [~~by or under authority of the Act~~] to appear on the label;

(e) Insufficient [~~Insufficiency of~~] label space, for the prominent placing of a [~~such~~] word, statement, or information, resulting from the use of label space to give materially greater distinction [~~conspicuousness~~] to any word, statement, or information, or to any design or device; or

(f) Smallness or style of type in which a [~~such~~] word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(2) [~~All~~] Words, statements, and other information required [~~by or under authority of the Act~~] to appear on the label or labeling shall appear [~~thereon~~] in the English language. [~~; provided, however, that in the case of~~] Articles distributed solely [~~in the Commonwealth of Puerto Rico or~~] in a territory where the predominant language is one other than English, the predominant language may be substituted for English.

(3) If the label contains any representation in a foreign language, all words, statements, and other information required pursuant to KRS 217.035 [~~by or under authority of the Act~~] to appear on the label or labeling shall appear [~~on the labeling~~] in the foreign language.

Section 8. [~~9.~~] Exemptions. (1) Except as provided by subsections (2) and (3) of this section, [~~a shipment or other delivery of~~] a cosmetic that is [~~which is, in accordance with the practice of the trade,~~] to be processed, labeled, or repacked [~~in substantial quantity~~] at an establishment other than [~~that~~] where originally processed or packed, shall be exempt, during the time of introduction into [~~and movement in intrastate~~] commerce and the time [~~of holding~~] in the [~~such~~] establishment, from [~~compliance with~~] the labeling requirements of KRS 217.085(1) and 217.095(2) if:

(a) The person who introduced the [~~such~~] shipment or delivery into [~~intrastate~~] commerce is the operator of the establishment where the [~~such~~] cosmetic is to be processed, labeled, or repacked; or

(b) If the [~~In case such~~] person is not the [~~such~~] operator, the [~~such~~] shipment or delivery is made to the [~~such~~] establishment under a written agreement; signed by and containing the post office address of the [~~such~~] person and [~~such~~] operator; and containing the [~~such~~] specifications for the processing, labeling, or repacking, [~~as the case may be,~~] of the [~~such~~] cosmetic in the [~~such~~] establishment that [~~as~~] will insure, if the [~~such~~] specifications are followed, that the [~~such~~] cosmetic will not be adulterated or misbranded upon completion of [~~such~~] processing, labeling, or repacking. The [~~Such~~] person and the [~~such~~] operator shall each keep a copy of the [~~such~~] agreement until two (2) years after the final shipment or delivery of the [~~such~~] cosmetic from the [~~such~~] establishment. If requested, copies shall be made available to the cabinet for inspection. [~~, and shall make such copies available for inspection at any reasonable hour to any officer or employee of the cabinet who requests them.~~]

(2) An exemption of a shipment or other delivery of a cosmetic pursuant to [~~under~~] subsection (1)(a) of this section shall, at the beginning of [~~the act of~~] removing the [~~such~~] shipment or delivery, or any part thereof, from the [~~such~~] establishment, become void ab initio if [~~of~~] the cosmetic comprising the [~~such~~] shipment, delivery, or part is adulterated or misbranded when [~~so~~] removed.

(3) An exemption of a shipment or other delivery of a cosmetic pursuant to [~~under~~] subsection (1)(b) of this section shall become void ab initio with respect to the person who introduced the [~~such~~] shipment or delivery into commerce upon refusal by the [~~such~~] person to make available for inspection a copy of the agreement, as required [~~by such clause~~].

(4) An exemption of a shipment or other delivery of a cosmetic pursuant to [~~under~~] subsection (1)(b) of this section shall expire:

(a) At the beginning of [~~the act of~~] removing the [~~such~~] shipment or delivery, or any part thereof, from the [~~such~~] establishment if the cosmetic comprising the [~~such~~] shipment, delivery, or part is adulterated or misbranded [~~within the meaning of the Act~~] when [~~so~~] removed; or

(b) Upon refusal by the operator of the establishment where the [~~such~~] cosmetic is to be processed, labeled, or repacked, to make

available for inspection a copy of the agreement, as required [~~by such clause~~].

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 18, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner
(1) Type and number of entities affected: 4 cosmetic manufacturers.
(a) Direct and indirect costs or savings to those affected: The proposed amendment is to provide clarity rather than operational impact.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): The proposed amendment has no financial impact.
(b) Reporting and paperwork requirements: The proposed amendment does not require additional reporting or paperwork requirements.
(2) Effects on the promulgated administrative body: The proposed amendment will have no effect upon the promulgating administrative body.
(a) Direct and indirect costs or savings: There will be no direct or indirect cost or savings due to the proposed amendment.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing the cost due to the proposed amendment.
(b) Reporting and paperwork requirements: There will be no additional reporting and paperwork requirements due to the proposed amendment.
(3) Assessment of anticipated effect on state and local revenues: The proposed amendment will have no effect upon the state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the administrative process under KRS Chapter 13A is applicable.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy in conflict, overlapping or duplicate.
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because revenue is not involved

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. Local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. Inspection of cosmetic manufacturing facilities by local health departments.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: Mandates the labeling of cosmetic products manufactured by cosmetic manufacturers.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:010. Definitions.

RELATES TO: KRS 217.650 to 217.710
STATUTORY AUTHORITY: KRS 194.050, 211.180, 211.090, 217.690
NECESSITY AND FUNCTION: KRS 217.690 [~~The Kentucky Hazardous Substances Labeling Act, KRS 217.650 to 217.710,~~] authorizes the Cabinet for Human Resources to adopt administrative regulations to regulate the control of hazardous substances in Kentucky. The purpose of this administrative regulation is to provide definitions that are applicable to all other Cabinet for Human Resources administrative regulations relating to hazardous substances, and to designate as hazardous substances any substance or mixture of substances which is a "strong sensitizer."

Section 1. Definitions. In addition to the definitions set forth in KRS 217.660, the following terms are defined as follows [~~shall have the meanings set forth below~~]:
(1) "Combustible" means a [~~any~~] substance which has a flash point of 100 to [~~above eighty (80) degrees Fahrenheit to, and including,~~] 150 degrees Fahrenheit.
(2) "Extremely flammable" means a [~~any~~] substance which has a flash point of [~~at or below~~] twenty (20) degrees Fahrenheit or less.
(3) "Extremely flammable contents of self-pressurized container" means contents of a self-pressurized container that a flashback (a flame extending back to the dispenser) is obtained at any degree of valve opening and the flash point is less than twenty (20) degrees Fahrenheit.
(4) "Extremely flammable solid" means a solid substance that ignites and burns at an ambient temperature of eighty (80) degrees Fahrenheit or less if subjected [~~when subject~~] to friction, percussion, or electrical spark.
(5) "Federal Act" means [~~the Federal Hazardous Substances Act~~ (]PL 86-613 74 Stat. 372; 15 USC, Sec. 1261, et seq., including the amendments thereto[)].
(6) "Flammable contents of self-pressurized container" means contents of a self-pressurized container that a flame projection exceeding eighteen (18) inches is obtained at full valve opening or a flashback (a flame extending back to the dispenser) is obtained at a [~~any~~] degree of valve opening.
(7) "Flammable solid" means a solid substance that ignites and burns with a self-sustained flame at a rate greater than one-tenth (1/10) [~~of an~~] inch per second along its major axis.
(8) "Flammable" applies to substances having a flashpoint above twenty (20) degrees Fahrenheit and below 100 degrees Fahrenheit.
(9) "Principal display panel" means the portion of the immediate

container, and an outer container or wrapping, which bears the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale.

(10) [(8)] "General home and household use" means a [any] hazardous substance, whether or not packaged, that under a [any] customary or reasonably foreseeable condition of purchase, storage, or use, may be brought into or around a house, apartment, or other place where people dwell, or in or around a [any] related building or shed including[, but not limited to] a garage, carport, barn, or storage shed. The term includes articles, such as polishes or cleaners, designed primarily for professional use but which are available in retail stores, such as hobby shops, for nonprofessional use. Also included are items[,] such as antifreeze and radiator cleaners that, although principally for car use, may be stored in or around dwelling places. The term does not include industrial supplies that might be taken into the home by a serviceman. An article labeled as, and marketed solely for, industrial use does not become subject to these administrative regulations because of the possibility that an industrial worker may take a supply for his own use. Size of unit or container is not the only index of whether the article is suitable for use in or around the household. The test is [shall be] whether, under a [any] reasonably foreseeable condition of purchase, storage, or use, the article may be found in or around a dwelling.

(11) [(9)] "Highly toxic" means a [any] substance which falls within any [of] the following categories:

(a) Produces death within fourteen (14) days in half or more than half of a group of ten (10) or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of fifty (50) milligrams or less per kilogram of body weight, if [when] orally administered; [or]

(b) Produces death within fourteen (14) days in half or more than half of a group of ten (10) or more laboratory white rats each weighing between 200 and 300 grams, if [when] inhaled continuously for a period of one (1) hour or less at an atmospheric concentration of 200 parts per million per liter by volume or less of gas or vapor or two (2) milligrams per liter by volume or less of mist or dust, provided the [such] concentration is likely to be encountered by man if [when] the substance is used in a [any] reasonably foreseeable manner; or

(c) Produces death within fourteen (14) days in half or more than half of a group of ten (10) or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, if [when] administered by continuous contact with bare skin for twenty-four (24) hours or less.

Section 2. Strong Sensitizer. KRS 217.660(4)(d) directs the Secretary for Human Resources to designate as hazardous substances any substance or mixture of substances which is a "strong sensitizer." On the basis of frequency of occurrence and severity of reaction information, the cabinet finds that the following substances have a significant potential for causing hypersensitivity and, therefore, meet the definition for "strong sensitizer" in KRS 217.660(4)(d):

(1) Paraphenylenediamine and products containing it;

(2) Powdered orris root and products containing it;

(3) Epoxy resins systems containing in any concentration ethylenediamine, diethylenetriamine, and diglycidyl ethers of molecular weight of less than 200;

(4) Formaldehyde and products containing one (1) percent or more formaldehyde; and

(5) Oil of bergamot and products containing two (2) percent or more of oil of bergamot.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: August 20, 1993

FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Terry M. Wescott

(1) Type and number of entities affected: These amendments will have no effect on the interstate and intrastate manufacturers or distributors of "general home and household use" consumer products which contain hazardous substances, as these firms had to comply with these changes in federal regulations adopted in 1986.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because there are no permit fees.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is being amended to comply with rules specified in KRS Chapter 13A, and to conform to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:020. Labeling and identification standards.

RELATES TO: KRS 217.650 to 217.710

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.180, 217.690

NECESSITY AND FUNCTION: KRS 217.690 [~~The Kentucky Hazardous Substances Labeling Act, KRS 217.650 to 217.710~~] authorizes the Cabinet for Human Resources to adopt administrative regulations to regulate the control of hazardous substances in Kentucky. [~~KRS 217.670 provides that a hazardous substance is misbranded if it fails to bear a label which "conspicuously" provides certain information.~~] The purpose of this administrative regulation is to provide uniform standards relating to the "conspicuousness" of labeling requirements; to specify requirements to identify hazardous substances that present special hazards and require specialized labeling to protect the public health; and to prevent the deceptive use of disclaimers on labels of hazardous substances.

Section 1. Conspicuousness of Labeling Requirements. (1) The signal word, the statement of the principal hazard or hazards, and instructions to read carefully any cautionary information that may be placed elsewhere on the label shall appear together on the main panel of the label. The [~~Such~~] information shall be placed together and distinctively apart from other wording or designs. The necessary prominence shall be achieved by placement within the borders of a square or rectangle with or without a borderline, and by use of suitable contrasts with the background achieved by distinctive typography or color, and by both color and typography if [~~when~~] needed.

(2) If the product is "highly toxic" the labeling shall also include in conjunction with the word "poison" the skull and crossbones symbol. The word "poison" is not considered a signal word as that term is used in subsection (1) of this section.

(3) The signal word and statement of hazard shall be in capital letters. The signal word (and the word "poison" if required) and statements of hazard shall meet the type size requirements set forth in subsection (9) of this section. [~~be of a size bearing a reasonable relationship to the other type on the main panel, but shall not be less than eighteen (18) point type and the size of the statement of hazard shall not be less than twelve (12) point type unless the label space on the container is too small to accommodate such type size. When the size of the label space requires a reduction in type size, the reduction shall be made to a size no smaller than necessary and in no event to a size smaller than six (6) point type.~~]

(4) All the items of label information required by KRS 217.670 or by administrative regulations prescribing additional information may appear on the main panel; but if they do not, all the [~~such~~] items not required by subsection (1) of this section to appear on the main panel shall be placed together in a distinctive place elsewhere on the label with adequate contrast achieved by typography, color, or layout. [~~except that~~] The name and place of business of the manufacturer, packer, or distributor may appear separately on the same or on a different panel. The type size used shall [~~bear a reasonable relationship to the printing on the panel involved and shall~~] be no smaller than the [~~ten (10) point~~] type size required in subsection (9) of this section, Table 1. [~~unless the available label space requires reductions, in which event it shall be reduced to no smaller than six (6) point type unless because of small label space an exemption has been granted pursuant to the cabinet's regulations.~~]

(5) Collapsible metal tubes containing hazardous substances shall be labeled so that all items of label information required by KRS 217.670 or by administrative regulations shall appear as close to the dispensing end of the container as possible. The size, placement, and conspicuousness of these statements shall conform with subsections (1), (3), [~~and~~] (4), and (9) of this section.

(6) Unpackaged hazardous substances shall be labeled so that all items of information required by the law or by administrative regulations shall appear upon the article [~~itself~~]. If the [~~In instances where such~~] labeling is impracticable because of the size or nature of the article, the required cautionary labeling shall [~~must~~] be displayed by [~~means of~~] a tag or other suitable material that is securely affixed to the article so that the labeling will remain attached throughout conditions of merchandising and distribution to the ultimate consumer. The size, placement, and conspicuousness of these statements shall conform with subsections (1), (3), [~~and~~] (4), and (9) of this section.

(7) If [~~When any~~] accompanying literature includes or bears [~~any~~] directions for use (by printed word, picture, design, or combination thereof), the [~~such~~] literature including a [~~any~~] placard, pamphlet, booklet, book, sign, or other graphic visual device shall bear all the information required by KRS 217.670.

(8) For the purposes of determining the proper type size for cautionary labeling, the area of the principal display panel shall be computed as follows:

(a) In the case of a rectangular package, where one (1) entire side is the principal display panel, the result of the height times the width of that side shall be the area of the principal display panel.

(b) In the case of a cylindrical or nearly cylindrical container or tube on which the principal display panel appears on the side, the area of the principal display panel shall be forty (40) percent of the result of the height of the container times its circumference.

(c) In the case of another shape of container, the area of the principal display panel shall be forty (40) percent of the total surface of the container, excluding areas such as flanges at tops and bottoms. If a container presents an obvious principal display panel (such as an oval or hour-glass shaped area on the side of a container for dishwashing detergent), the area to be measured shall be the entire area of obvious principal display panel.

(9) The type size of cautionary labeling shall be reasonably related to the type size of another printing appearing on the same panel, but shall meet the minimum size requirements computed for the area of the principal display indicated in Table 1 below:

TABLE 1

Area of principal panel in square inches	0-2	>2-5	>5-10	>10-15	>15-30	>30
Type size in inches*						
Signal Word**	3/64	1/16	3/32	7/64	1/8	5/32
Statement of Hazard	3/64	3/64	1/16	3/32	3/32	7/64
Other Cautionary Material***	1/32	3/64	1/16	1/16	5/64	3/32

> means "greater than."
*minimum height of printed image of capital or upper case letters.
**including the word "poison" if required instead of a signal word.
***size of lettering for other cautionary material is based on the area of the display panel on which the cautionary material appears.

Section 2. Special Labeling Requirements. In addition to the requirements of KRS 217.670 the following hazardous substances are [~~shall be~~] deemed to be misbranded unless the label includes the requirements stated below:

(1) Charcoal briquettes and other forms of charcoal for cooking or heating. Because inhalation of the carbon monoxide produced by burning charcoal indoors or in confined areas may cause serious injury or death, containers of the [~~such~~] products shall bear the following borderlined statements: "WARNING; Do Not Use for Indoor Heating or Cooking Unless Ventilation is Provided for Exhausting Fumes to Outside. Toxic Fumes May Accumulate and Cause Death". For bags of charcoal, the above statement shall appear within a heavy borderline in a color sharply contrasting to that of the background, on both front and back panels in the upper twenty-five (25) percent of the panels of the bag at least two (2) inches below the seam, and at least one (1) inch above [~~any~~] reading material or design elements in type size as follows: The signal word "WARNING" shall appear in capital letters at least three-eighths (3/8) inch in height; the remaining text of the warning statement shall be printed in letters at least three-sixteenths (3/16) inch in height.

(2) Diethylene glycol. Because diethylene glycol and mixtures containing ten (10) percent or more by weight of diethylene glycol are commonly marketed, stored, and used in a manner increasing the possibility of accidental ingestion, the [~~such~~] products shall be labeled with the signal word "Warning" and the statement "Harmful if swallowed."

(3) Ethylene glycol. Because ethylene glycol and mixtures containing ten (10) percent or more by weight of ethylene glycol are commonly marketed, stored, and used in a manner increasing the possibility of accidental ingestion, the [~~such~~] products shall be labeled with the signal word "Warning" and the statement "Harmful or fatal if swallowed."

(4) Methyl alcohol (methanol). Because death and blindness can result from the ingestion of methyl alcohol, the label for this substance and mixtures containing four (4) percent or more by weight of this substance shall include the signal word "Danger," the additional word "Poison," and the skull and crossbones symbol. The statement of hazard shall include "Vapor harmful" and "May be fatal or cause blindness if swallowed." The label shall also bear the statement "Cannot be made nonpoisonous."

(5) Turpentine. Because turpentine (including gum turpentine, gum spirits of turpentine, steam-distilled wood turpentine, sulfate wood turpentine, and destructively distilled wood turpentine) and products containing ten (10) percent or more by weight of the [~~such~~] turpentine, in addition to oral toxicity resulting in systemic poisoning, may be aspirated into the lungs resulting in chemical pneumonitis, pneumonia, and pulmonary edema, the [~~such~~] products shall be labeled with the signal word "Danger" and the statement of hazard "Harmful or fatal if swallowed."

(6) Benzene, toluene, xylene, petroleum distillates:

(a) Because inhalation of the vapors of products containing five (5) percent or more by weight of benzene may cause blood dyscrasias, the [~~such~~] products shall be labeled with the signal word "Danger," the statement of hazard "Vapor harmful," the word "poison," and the skull and crossbones symbol. If the product contains ten (10) percent or more by weight of benzene, it shall bear the additional statement of hazard "Harmful or fatal if swallowed" and the additional statements "If swallowed, do not induce vomiting. Call physician immediately."

(b) Because products containing ten (10) percent or more by

weight of toluene, xylene, or [~~any of the~~] other substances or combination thereof listed in this section may be aspirated into the lungs, with resulting chemical pneumonitis, pneumonia, and pulmonary edema, the [~~such~~] products shall be labeled with the signal word "Danger," the statement of hazard "Harmful or fatal if swallowed," and the statements "If swallowed, do no induce vomiting. Call physician immediately."

(c) Because inhalation of the vapor of products containing ten (10) percent or more by weight of toluene or xylene or combination [~~thereof~~] may cause systemic injury, the [~~such~~] products shall bear the statement of hazard "Vapor harmful" in addition to the statements otherwise prescribed in this section.

(7) Use of the word "Poison." For the following substances, and at the following concentrations, the word "Poison" is necessary instead of a [~~any~~] signal word:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten (10) percent or more.

(b) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H_2SO_4) in a concentration of ten (10) percent or more;

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five (5) percent or more;

(d) Carbolic acid (C_6H_5OH), also known as phenol, and any preparation containing carbolic acid in a concentration of five (5) percent or more;

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten (10) percent or more;

(f) Any salt of oxalic acid and any preparation containing the [~~any such~~] salt in a concentration of ten (10) percent or more;

(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_2O_2$) in a concentration of twenty (20) percent or more;

(h) Hypochlorous acid, [~~either~~] free or combined, and any preparation containing the same in a concentration that will yield ten (10) percent or more by weight of available chlorine;

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH) including caustic potash and vienna paste (vienna caustic), in a concentration of ten (10) percent or more;

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye in a concentration of ten (10) percent or more;

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five (5) percent or more; and

(l) Ammonia water and any preparation containing free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn," in a concentration of five (5) percent or more.

(8) Fire extinguishers. If [~~When~~] a substance or mixture of substances labeled for use in or as a fire extinguisher produces substances that are toxic if [~~when~~] used according to label directions to extinguish a fire, the containers for the [~~such~~] substances shall bear the following labeling:

(a) If [~~When~~] substances are produced that meet the definition of highly toxic, the signal word "Danger" and the statement of hazard "Poisonous gases formed when used to extinguish flame or on contact with heat" shall be used.

(b) If [~~When~~] substances are produced that meet the definition of toxic, the signal word "Caution" or "Warning" and the statement of hazard "Dangerous gas formed when used to extinguish flame or on contact with heat" shall be used.

(c) Regardless of whether paragraphs (a) or (b) of this subsection applies, a [~~any~~] substance or mixture of substances labeled for use as a fire extinguisher that, if applied to an electrical fire, would subject the user to the likelihood of electrical shock shall be conspicuously labeled "Caution: Do not use on electrical wires."

(d) All substances or mixtures of substances specified in this subsection shall also bear the additional statements "Used in an enclosed place; may be fatal" and "Do not enter area until well ventilated and all odor of chemical has disappeared."

Section 3. Deceptive Use of Disclaimers. A hazardous substance shall not be deemed to have met the requirements of KRS 217.670 or the cabinet's administrative regulations if there appears in or on the label (or in [~~any~~] accompanying literature) words, statements, designs, or other graphic material that [~~in any manner~~] negates or disclaims [~~any of~~] the label statements required by law or administrative regulation.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 20, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Terry M. Wescott

(1) Type and number of entities affected: These amendments will have no effect on the interstate and intrastate manufacturers or distributors of "general home and household use" consumer products, which contain hazardous substances, as these firms had to comply with these changes in federal regulations adopted in 1987.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because there are no permit fees.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is being amended to comply with rules specified in KRS Chapter 13A, and to conform to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:030. Exemptions.

RELATES TO: KRS 217.650 to 217.710, 16 CFR Part 1500.83

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.180, 217.690

NECESSITY AND FUNCTION: [~~The Kentucky Hazardous Substances Labeling Act,~~] KRS 217.650 to 217.710[,] authorizes the Cabinet for Human Resources to regulate the control of hazardous substances in Kentucky. KRS 217.670(2) authorizes the Secretary for Human Resources to provide minimum information which shall appear on the labels for small packages. The purpose of this administrative regulation is to provide label exemption requirements for specified small packages, minor hazards, and special circumstances; to coordinate federal-state action if [~~in the event~~] an article is banned and [~~is~~] deemed to be dangerous to the public health; to assure uniformity for [~~in the event of~~] variance between the regulations adopted under the state and federal acts; and to assure uniformity of test procedures.

Section 1. Exemptions. [~~All~~] Exemptions for small packages, minor hazards and special circumstances, [~~as~~] set forth in regulations promulgated under 15 USC Sec. 1261-1276 [~~the Federal Hazardous Substances Act~~], shall be [~~so~~] exempted in Kentucky.

Section 2. Banned Hazardous Substances [~~that are~~] Dangerous to Public Health. If [~~In the event that~~] a hazardous substance is banned pursuant to federal law by the U.S. Consumer Product Safety Commission, the Cabinet may, if it deems the [~~such~~] article to be dangerous to public health, quarantine the [~~such~~] article pursuant to KRS 217.700.

Section 3. Variance between State and Federal Regulations. If [~~In the event of~~] a variance exists between the regulations adopted under KRS 217.650 to 217.710 [~~the Kentucky Hazardous Substances Labeling Act~~] and those adopted under 15 USC Sec. 1261-1276 [~~the federal act relating to hazardous substances~~], compliance with the federal regulations shall be deemed compliance with the provisions of the administrative regulations adopted under KRS 217.650 to 217.710. [~~these regulations.~~]

Section 4. Test Procedures for Hazardous Substances. The test procedures prescribed under 15 USC Sec. 1261-1276 [~~by the federal act~~] and federal regulations shall be applicable to all administrative regulations adopted by the cabinet relating to hazardous substances.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 7, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Terry M. Wescott

(1) Type and number of entities affected: These amendments will have no effect on the interstate and intrastate manufacturers or distributors of "general home and household use" consumer products which contain hazardous substances as the changes made to comply with the requirements of KRS Chapter 13A. This administrative regulation relates to federal regulations which were last revised in 1983.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because there are no permit fees. No additional requirements will be mandated, as applicable firms have been required to be in compliance with federal regulations which were last revised in 1983.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, administrative regulation or policy.

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because this administrative regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is being amended to comply with rules specified in KRS Chapter 13A, however, this administrative regulation conforms to the federal mandate under the Federal Hazardous Substance Act (FHSA), 15 USC 1261, and compliance standards set forth by federal regulation. This administrative regulation specifically relates to 16 CFR 1500.83 which was last revised in 1983.

2. State compliance standards. Appropriate state exemption requirements originated in federal regulation 16 CFR 1500.83.

3. Minimum or uniform standards contained in the federal mandate. Exemption requirements are indicated in federal regulation 16 CFR 1500.83.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No stricter requirements will be imposed. This administrative regulation relates to and conforms with requirements in 16 CFR 1500.83.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional responsibilities or requirements will be imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 50:040. Hauler requirements.

RELATES TO: KRS 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090, 217C.040
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS Chapter 217C to regulate milk haulers. The function of this administrative regulation is to provide uniform standards for the transportation, handling, sampling, examination, and grading of raw milk and the issuance and revocation of milk hauler permits.

Section 1. Milk Hauler Permit Requirements. No person shall haul raw milk in this state without a permit from the cabinet. [~~Provided, however, that~~] Individual producer delivery or transport delivery between plants or receiving and transfer stations shall not be required to have a permit. Owners of bulk tank route trucks shall immediately notify the cabinet of [~~any~~] new haulers. [~~All~~] New haulers shall be required to obtain a permit before hauling milk. A new hauler that has been inspected and certified by the cabinet, shall be issued a temporary permit which is valid until the next hauler training session. Upon successful completion of the training course, the hauler shall be issued a permit. [~~within sixty (60) days of their employment.~~] Permits shall not be transferable with respect to persons or locations. Permits shall continue in force unless suspended or revoked for cause. All haulers collecting raw milk samples [~~to be used by the cabinet~~] for regulatory purposes shall be permitted by the cabinet as an "Official Sample Collector," according to this administrative regulation. All haulers shall be inspected and recertified each twelve (12) months.

Section 2. Bulk Milk Hauler Standards. Each bulk milk hauler shall be equipped with an accurate [~~pocket type metal stemmed~~] thermometer approved by the cabinet if [~~when~~] collecting milk from dairy farms, and shall observe the following sanitary practices in the [~~his~~] milk collection procedure [~~operations~~]:

(1) [~~His~~] Hands and outer clothing shall be clean during all pickup operations.

(2) Milk haulers shall smell milk for off-odors. [~~The milk shall be smelled through the port opening in the cover of the bulk tank for off odors prior to raising the lid for a visual examination of the raw milk.~~]

(3) A visual examination shall be made of the raw milk in the bulk tank. Milk [~~which is~~] visibly unfit for human consumption pursuant to [~~in accordance with the provisions of~~] KRS Chapter 217, [~~and regulations pursuant to Chapter 217C~~] shall be rejected and not collected. The bulk tank lid shall be closed immediately after making the visual examination if [~~whenever~~] possible.

(4) The milk transfer hose used to withdraw raw milk from the farm bulk tank shall [~~not exceed twenty (20) feet in length and~~] enter the milkhouse only through the hoseport [~~porthole~~] provided for that purpose.

(5) If milk has leaked past the core of the outlet valve of the farm bulk tank, the outlet port of the valve shall be washed and sanitized prior to withdrawing the milk.

(6) [~~When~~] The cap from the end of the transfer hose [~~is being removed, it~~] shall be handled in a sanitary manner and stored [~~so as~~] to prevent contamination [~~it from being contaminated~~] while milk is being pumped from the farm bulk tank into the bulk milk tank truck.

(7) After the milk has been removed from the farm bulk tank, the bottom of the tank shall be observed for sediment and other foreign material.

(8) Sediment and other foreign material conditions observed shall be noted on the plant and producer's copy of the ticket.

(9) The following information concerning the collection of milk shall be recorded on the weight ticket and the producers chart at the milkhouse:

(a) Date;
(b) Time;
(c) Temperature;
(d) Hauler identification; and
(e) Weight of the milk. [~~The date of milk collection and the temperature of the raw milk shall be entered on the weigh ticket.~~]

(10) After the milk has been removed from the farm bulk tank, the transfer hose shall be removed and recapped before the farm bulk tank is rinsed with water. After recapping, the transfer hose shall be rinsed free of exterior soil.

(11) A bulk milk hauler shall not collect milk from a [~~any~~] dairy farm for delivery to a milk plant, receiving station, or transfer station unless the [~~such~~] farm holds a valid permit or authorization for sale from the cabinet.

(12) At the time of collection of milk from each dairy farm, the bulk milk hauler shall collect the entire volume of acceptable milk being stored in the bulk tanks [~~on each dairy farm~~]. Only milk in properly constructed and operated equipment shall be collected.

(13) All precautions shall be taken to prevent the entrance of flies into the milkhouse.

(14) At least one (1) time [~~once~~] each three (3) months, the bulk milk hauler shall check the accuracy of the thermometer of each of his milk producer's bulk milk tanks against his [~~pocket type~~] thermometer which shall be compared to a certified thermometer and corrections made each six (6) months. The temperatures obtained from both thermometers shall be entered on the weigh ticket. If there is a difference between the readings on the two (2) thermometers, the reading of the bulk milk hauler's thermometer shall be reported as the official temperature on that day and each succeeding day until the thermometer on the bulk milk tank is adjusted or repaired to be accurate.

(15) If milk in a bulk tank is rejected, the reason for rejection shall be noted by the hauler and the tank tagged with appropriate tags prepared [~~by~~] or approved by the cabinet.

Section 3. Sampling Appurtenances for Bulk Milk Trucks. Every bulk milk tank truck used to collect raw milk on a bulk milk route shall be equipped with:

(1) A sample dipper or other sampling device of sanitary construction approved by the cabinet.

(2) A container suitable for the storage of the sample dipper in a sanitizing solution enroute between the farms [~~on the bulk route~~]. If other sampling devices are used, they shall be protected from contamination.

(3) A sample carrying case shall be constructed of approved [~~such~~] material and shall [~~in such a way as to~~] maintain producer raw milk samples at temperatures [~~a temperature~~] of thirty-two (32) [~~degrees Fahrenheit~~] to forty (40) degrees Fahrenheit from the time the [~~such~~] samples are collected until they are delivered to the milk plant, receiving station or transfer station.

(4) [A] Sample racks approved by the cabinet shall be a size sufficient [~~and of sufficient size~~] to hold all samples [~~at least one (1) sample~~] of raw milk in an upright position. A sample shall be taken from the bulk milk tank [~~from each bulk milk tank~~] of each milk producer represented on the load of raw milk being transported to a milk plant, receiving station, or transfer station. A sample shall be taken from the bulk tank truck after the last producer pickup. [~~plus one (1) sample to be used for temperature determination.~~]

Section 4. Sample Collection from Bulk Tanks. The milk hauler shall collect a sample of milk from each farm bulk tank after the milk has been thoroughly agitated (a minimum of five (5) minutes for bulk tanks less than 1,000 gallons, or ten (10) minutes for bulk tanks 1,000 gallons or more) [~~and~~] before opening the outlet valve[~~, at a frequency directed by the cabinet~~]. [~~Such~~] Samples shall be collected in the following manner:

(1) If a sample dipper is used, it shall be clean and transported between farms on the bulk milk route in an approved sanitizing solution equivalent to 100 p.p.m. chlorine [~~or other approved sanitizers~~]. Other sampling devices shall be kept free of contamination.

(2) After removal from the sanitizing solution, all of the sanitizing solution shall be drained from the sample dipper.

(3) The sample dipper shall [~~then~~] be rinsed two (2) times [~~twice~~] in the milk in the farm bulk tank and completely [~~then~~] drained before collecting the sample.

(4) A sample shall [~~then~~] be collected from [~~through the port opening in the cover of~~] the bulk tank and placed in a sterile container.

(5) The sample container shall [~~then~~] be closed and immediately placed in melting ice water in the sample carrying case. [~~on the bulk milk tank truck in such a way that~~] The top of the sample container shall not be [~~is not~~] submerged in the refrigerant. Producer raw milk samples shall be maintained at temperatures [~~a temperature~~] of thirty-two (32) [~~degrees Fahrenheit~~] to forty (40) degrees Fahrenheit until delivered to the milk plant, receiving station, or transfer station. [~~Such~~] Samples shall not be frozen.

(6) Each sample [~~collected~~] shall be identified with date and time [~~the sample was~~] collected, the temperature of the milk in the farm bulk tank, the route and name or identity number of the milk producer and the person collecting the sample.

(7) Prior to or at the time of collecting raw milk from the first milk producer on the bulk milk route, the bulk milk hauler shall collect a sample of milk for temperature determination. The temperature sample shall have date, time, and temperature recorded on the sample container. The [~~Such~~] sample shall be refrigerated until it arrives at the laboratory.

(8) Sampling equipment shall be rinsed in clean water immediately after each usage.

[~~(9) If one (1) pint samples are used to conduct the required sediment tests of each milk producer's raw milk, the bulk milk hauler shall collect and identify such full one (1) pint samples as requested by the milk plant, receiving station, transfer station or cabinet. A sample dipper, which shall be cleaned and sanitized prior to the collection of each sample, shall be used. Such one (1) pint samples shall be collected and transported in such a manner as to not interfere with the proper conduct of sediment tests.~~]

Section 5. Frequency of Raw Milk Pickup. All raw milk for manufacturing purposes shall be collected as required by 902 KAR 50:031 [~~50:050~~]. Raw milk collection frequencies may be waived by the cabinet in the case of emergencies. All Grade A bulk tank raw milk shall be collected at least every forty-eight (48) hours, and all Grade A milk shipped in cans shall be collected every twenty-four (24) hours[~~, except in the case of emergencies~~]. Collection of raw milk, from the first producer on the bulk milk pickup route to the final producer, shall be without undue delay. Collection of a partial load of milk, holding the milk overnight, and finishing the collection the following day shall not be permitted unless pump and pickup hose have been washed and sanitized at a location approved by the cabinet.

Section 6. Bulk Milk Tank Truck Owner Standards. (1) Every bulk tank truck used to collect raw milk on a bulk milk route shall be of sanitary design and construction.

(2) The owner of the bulk tank connected to the truck chassis shall be responsible for maintaining the bulk tank [~~it~~] and [~~its~~] milk contact appurtenances in good repair and in a clean, sanitary condition. [~~Additionally,~~] The owner of the bulk tank connected to the truck chassis shall obtain an identification number from the cabinet. The number shall be placed on the rear of the tank in letters at least three (3) inches high.

(3) Each bulk milk tank truck and [~~its~~] milk contact appurtenances shall be cleaned after the completion of each day's usage and sanitized prior to beginning the next day's operation in a manner and at a location approved by the cabinet.

(a) Each plant, receiving or transfer station, or other location which washes bulk tank trucks shall provide truck wash tags.

(b) The company or person responsible for washing the bulk tank truck shall affix a wash tag in the interior pump compartment of the truck signifying the date and location at which the truck and appurtenances were cleaned and sanitized and the signature or initials of the person responsible [~~for cleaning the bulk tank truck and appurtenances~~]. Over the road tankers without rear pump compartments shall have the wash tag affixed to the top manhole cover or the outlet valve.

(c) Receiving locations shall not receive milk from a truck not properly tagged signifying date and location cleaned, unless [~~otherwise~~] approved by the cabinet. Cleaning tags shall be removed if [~~whenever~~] a truck is unloaded and the tags maintained at the receiving location for a minimum of ninety (90) [~~fifteen (15)~~] days.

(d) Trucks which pick up and deliver two (2) loads of milk in the same day shall have a new cleaning tag affixed after the first load is delivered explaining why the truck is running unwashed on the second trip.

(e) Wash tag requirements apply to all farm bulk milk pickup trucks and milk transport tankers. If [~~When~~] transport trucks are not washed by the plant which loads the truck, the truck shall have a wash tag prior to loading. Bulk milk trucks [~~Transport trucks or trucks from another plant, receiving or transfer station~~] shall have a properly identified wash tag before the milk is [~~to be~~] received and unloaded unless [~~otherwise~~] approved by the cabinet.

(4) The bulk milk tank and its milk contact appurtenances shall be protected from contamination after being cleaned and sanitized.

(5) Milk in bulk milk tank trucks shall be maintained at a temperature of forty-five (45) degrees Fahrenheit or less for Grade A milk and fifty (50) degrees Fahrenheit or less for manufacturing milk from the time of collection until delivered to a milk plant, receiving station, or transfer station. [~~Provided, that~~] Grade A milk may be collected within two (2) hours after milking if the blend temperature in the farm bulk cooler does not exceed fifty (50) degrees Fahrenheit.

(6) Milk in farm bulk tanks in excess of forty-five (45) degrees Fahrenheit for Grade A milk and fifty (50) degrees Fahrenheit for manufacturing milk shall not be commingled with other producers' milk on a bulk tank truck, except as provided for in subsection (5) of

this section.

(7) The name of the milk plant or company or the name and address of the owner of the bulk milk pickup tank shall be legibly marked on both sides or on the rear of the vehicle in letters not less than one and one-half (1 1/2) inches in height.

(8) Each bulk milk route owner shall provide a bulk milk hauler who holds a valid permit for all bulk milk collection. The permit shall be carried on the person or in the vehicle. Milk processing plants shall not receive raw milk from a Kentucky producer which has not been collected by a permitted hauler.

Section 7. Milk Plant, Receiving Station and Transfer Station Standards. It shall be the responsibility of the milk plant, receiving station, or transfer station to provide competent personnel to receive producer raw milk samples from each bulk milk tank truck. The temperature of the temperature sample (if applicable), shall be recorded and the samples properly identified and stored prior to delivery to the laboratory. The milk plant, receiving station, or transfer station shall [~~also~~] be responsible for providing facilities for the storage of producer raw milk samples at a temperature of thirty-two (32) to forty (40) degrees Fahrenheit at which temperature they shall be maintained until they are received by the laboratory for analysis. Producer raw milk samples shall not be transferred to another sample container after they have been collected by the bulk milk hauler. Required laboratory analysis shall begin no later than thirty-six (36) hours [~~the second day~~] after the first [~~date the~~] sample on the route was collected. Milk producers and bulk milk haulers shall not receive notice of which samples are to be used for bacteriological analysis.

Section 8. Milk Hauler Permit Suspension, Revocation, and Reinstatement. (1) If [~~Whenever~~] the cabinet has reason to believe that a public health hazard exists, or [~~whenever~~] the permit holder has willfully refused to allow [~~permit~~] inspection, the permit may be suspended immediately upon notice to the permit holder without a hearing. [~~In such event~~] The permit holder may request a hearing which shall be granted within ten (10) days.

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice of intent to suspend which shall specify the violation[~~(s)~~] in question and afford the holder a reasonable opportunity to correct same.

(3) If the cabinet's reinspection, after the written notice of intent has been issued, indicates the violation has [~~(s) have~~] not been corrected, the cabinet may suspend the hauler's permit or require the hauler and owner to appear before the cabinet at a hearing to justify why the permit should not be suspended.

(4) Upon written application of a [~~any~~] person whose permit has been suspended, or upon application within forty-eight (48) hours of a [~~any~~] person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within a reasonable time proceed to a hearing to ascertain the facts of the [~~such~~] violation or interference. [~~and~~] Upon evidence presented at the [~~such~~] hearing, the hearing officer shall affirm, modify, or rescind the suspension or notice of intention to suspend.

(a) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing," revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing," and may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(b) The cabinet shall notify the requesting party in writing of the:

1. Name of the hearing officer; and
2. Time and place of the hearing.

(c) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses.

(d) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(e) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

(5) A [~~Any~~] permit suspended under the provisions of this section may be reinstated [~~upon application~~] if all violations are found to be corrected upon reinspection by the cabinet, and the cabinet is in receipt of Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 18, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee

(1) Type and number of entities affected: Approximately 400 haulers and over-the-road trucks.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No revenue generated.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 50:080. Open dating requirements.

RELATES TO: KRS 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, standards of identity, sale and [~~such~~] other matters relating to milk and milk products as may be necessary to protect the public health. This administrative regulation establishes uniform standards for the open dating of Grade A pasteurized milk and milk products sold in Kentucky and requires that an open [~~a consumer information or purchase guide~~] date be legibly applied to retail packages offered for sale to the final consumer.

Section 1. Open Date Required. No person shall sell or offer for sale any Grade A pasteurized milk or milk product in this state in a consumer package that does not bear the open date as required by this administrative regulation.

Section 2. Open Date Labeling. (1) The open date shall:
(a) Appear in a [~~such~~] form that is [~~as to be~~] conspicuous, legible, and [~~commonly~~] understandable;
(b) [~~. It shall~~] Be boldface print in contrast to the background, by typography, color, embossing, debossing, [~~or~~] molding, or [~~of~~] other manner [~~matter~~] on the package;
(c) [~~, and shall~~] Be placed on that part of the container most likely to be displayed [~~, presented, or shown, or examined under customary conditions of display~~] for retail sale; and
(d) [~~shall~~] Not interfere with legibility of other mandatory labeling requirements of the product.
(2) The open date shall be expressed by the first three (3) letters of the month followed by or preceded by the numeral or numerals constituting the appropriate calendar date, or expressed numerically by the number of the month preceding the number of the day. (For example: June 1 may be expressed "Jun 1" "1 Jun," "0601," or "06-01."
(3) The open dating of Grade A pasteurized milk and milk products bottled in glass containers for home delivery are exempt from this administrative regulation.

Section 3. Certification of Open Date Required. (1) Each distributor or processor manufacturing, processing, or packaging Grade A pasteurized milk and milk products for sale within this state shall comply with the provisions of this administrative regulation and file and certify with the cabinet the open date for each product. The processor or distributor requesting an open date certification for a product shall provide the cabinet with the research data used to support the product open date certification request.
(2) Samples of products for open date evaluation may be obtained at [~~the~~] processing plants, delivery trucks, distributors, or from retail outlets. The temperature and open date shall be officially recorded at the time of sample collection.

Section 4. Enforcement. If [~~In the event~~] a product is not sold within the period specified in the open date, the cabinet shall take [~~appropriate~~] action [~~necessary~~] to remedy the condition consistent with this administrative regulation by removing the product from consumer channels and causing the product to be returned to the milk plant of origin for destruction. [~~applicable public health laws and regulations.~~]

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 18, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee
(1) Type and number of entities affected: Manufacturers of milk and milk products sold within the Commonwealth of Kentucky. Makes KRS Chapter 13A changes.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgated administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: No revenue generated.
TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 50:120. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C
STATUTORY AUTHORITY: KRS 194.050, 217C.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 217C.090 to issue administrative regulations allowing, upon written recommendation of a physician, the sale of goat milk which has not been pasteurized. This administrative regulation sets uniform standards for the production, handling, sampling, examination, and sale, at the farm, of goat's milk which has not been pasteurized and for the inspection of the goat farm facilities; and provides for the issuance, revocation, and reinstatement of farm permits.

Section 1. Permits. (1) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of a [~~any~~] permit to a goat milk producer, the cabinet shall conduct an inspection of the producer's facilities. A producer [~~who is~~] not in compliance with this administrative regulation, shall not be issued a permit, and violations shall be given to the producer in writing and[~~/or~~] posted in a conspicuous place at the farm. A permit may be issued if [~~whenever~~] the inspection reveals compliance with this administrative regulation.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

(4) The cabinet shall suspend the [~~such~~] permit, if the cabinet [~~whenever it~~] has reason to believe that a public health hazard exists; [~~or whenever~~] the permit holder has violated any of the requirements of this administrative regulation; or [~~whenever~~] the permit holder has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if [~~where~~] the milk involved creates, or appears to create, an imminent hazard to the public health; or in a [~~any~~] case of [a] willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend permit. The [~~, which~~] notice shall specify [~~with particularity~~] the violation[~~(s)~~] in question and afford the permit holder [~~such~~] reasonable opportunity to correct the [~~such~~] violation[~~(s)~~] as may be agreed to by the parties; or in the absence of agreement, fixed by the cabinet before making an [~~any~~] order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet. Upon notification acceptable to the cabinet by a [~~any~~] person whose permit has been suspended, or upon application within forty-eight (48) hours by a [~~any~~] person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of the [~~such~~] violation or interference. [~~and~~] Upon evidence presented at the [~~such~~] hearing the hearing officer shall affirm, modify, or rescind the suspension or intention to suspend. Upon repeated violation[~~(s)~~], the cabinet may revoke the [~~such~~] permit following reasonable notice to the permit holder and an opportunity for a hearing.

(5) A [~~Any~~] producer whose permit has been suspended may make written application for reinstatement of the permit on Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) If [~~When~~] the permit suspension has been due to violation of quality or temperature standards, the cabinet, within one (1) week after receipt of Form DFS-7A, "Application for Reinstatement of Permit", [~~notification for reinstatement of permit~~] shall conduct an inspection and collect a sample to determine if compliance with this administrative regulation has been [~~is being~~] met. If [~~Whenever~~] the inspection and sample analysis indicate compliance with this administrative [~~the~~] regulation, permit reinstatement may be made.

(7) If [~~When~~] the permit suspension has been due to the presence of a pathogenic organism in the milk sample, collection and analysis shall continue at the rate of at least two (2) per week for two (2) weeks after conditions of subsection (6) of this section have been met.

Section 2. Sale Restrictions and Volume Control. (1) Unpasteurized goat milk shall be sold from a permitted goat producer only to persons with a [~~who have~~] written recommendation from a physician.

(2) A written recommendation statement from a physician shall be for a specific individual and shall be kept on file at the producer location and subject to inspection by the cabinet.

(3) Written recommendation statements shall be kept on file by the producer for at least one (1) year.

(4) The producer shall keep on file records stating volume of unpasteurized goat milk sold and date of sales to each person having submitted a written recommendation statement.

(5) All sale of unpasteurized goat milk regulated under this administrative regulation shall be from on-the-farm sales only.

Section 3. Inspection of Goat Farm. (1) Inspection of each goat farm shall be made prior to the issuance of a permit.

(2) Inspection of each goat farm shall be made at least one (1) time [~~once~~] each two (2) months after the issuance of a permit.

(3) If the violation of any requirement [~~set forth~~] in Section 6 of this administrative regulation is [~~be~~] found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. This second inspection shall be used to determine compliance with the requirements of Section 6 of this administrative regulation. A [~~Any~~] violation of the same requirement of Section 6 of this administrative regulation on the [~~such~~] second inspection shall call for permit suspension in accordance with Section 1(4) of this administrative regulation.

(4) One (1) copy of the inspection report shall be provided [~~handed to~~] the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the milk house. The [~~Said~~] inspection report shall not be defaced and shall be made available to the cabinet upon request. An identical copy of the inspection report shall be filed with the records of the cabinet.

(5) Every goat producer shall, upon request of the cabinet [~~department~~], permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this administrative regulation.

(6) No person shall, in an official capacity, obtain [~~any~~] information under the provisions of this administrative regulation (including information as to the quantity, quality, source, or disposition of milk or milk products, or results of inspections or tests [~~thereof~~]) to use the [~~such~~] information to his own advantage or to reveal it to an [~~any~~] unauthorized person.

Section 4. Sampling Frequency and Required Test. (1) A representative sample of each producer's milk shall be collected at the farm by the cabinet each month and analyzed in an official laboratory for bacteria count, somatic cell count, antibiotics, adulteration with water, and temperature.

(2) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory as directed by the cabinet.

(3) Samples of raw milk may be collected for pesticide analysis as directed by the cabinet.

(4) If [~~Whenever~~] two (2) of the last four (4) consecutive bacterial counts, somatic cell counts, or cooling temperatures, taken on separate days, exceed the limit of the standard, the cabinet shall send a written notice [~~thereof~~] to the person concerned. The [~~This~~] notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of the [~~such~~] notice, but not before the lapse of three (3) days. Immediate suspension of permit in accordance with Section 1(4) of this administrative regulation [~~and/~~]or court action shall be instituted if [~~whenever~~] the standard is violated by three (3) of the last five (5) bacterial counts, cooling temperatures, or somatic cell counts.

(5) If [~~Whenever~~] an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues. [~~and~~] No milk shall be offered for sale until it is shown, by a subsequent sample, to be free of antibiotic or pesticide residues or below the actionable levels established for

[such] residues.

(6) If [Whenever] pathogenic organisms are found in the milk, immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

(7) All samples shall be analyzed in an official laboratory or an officially designated laboratory. Analytical procedures shall be in compliance with "Standard Methods for the Examination of Dairy Products" [and/]or "Official Methods of Analysis" of the Association of Official Analytical Chemists. Methods for determining quality testing shall be those described in the "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992, published by the American Public Health Association, and the "Official Methods of Analysis", 15th Edition, 1990, Volumes I and II, published by the Association of Official Analytical Chemists, Inc., unless otherwise approved by the cabinet. Copies of the "Standard Methods for the Examination of Dairy Products", revised 1992, incorporated by reference, and the "Official Methods of Analysis", revised 1990, incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 5. Bacterial, Chemical, and Temperature Standards. (1) [All] Unpasteurized goat milk shall be produced, handled, stored, and packaged to conform with the following standards:

(a) Temperature - cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking. [and] Subsequent milkings shall not exceed fifty (50) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits - not to exceed 20,000 per ml.

(c) Somatic cells - not to exceed 1,000,000 per ml.

(d) Antibiotics - negative.

(e) Coliform - not to exceed ten (10) per ml.

(f) Pathogens - negative.

(g) Pesticides and chemical adulterants - negative.

(2) No process, manipulation, or additives shall be applied to the milk, other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 6. Sanitation Requirements. (1) Abnormal milk. Goats, which show evidence of the secretion of abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Goats treated with, or goats which have consumed chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the cabinet may be damaging [deleterious] to human health, shall be milked last or with separate equipment and the milk disposed of as the cabinet [department] may direct.

(2) Milking barn or parlor construction. A milking barn or parlor shall be provided on all farms in which the milking herd shall be housed during milking operations. The areas used for milking purposes shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted or finished in an approved manner, in good repair, and ceiling dust tight;

(c) Be provided with natural [and/]or artificial light, well distributed for day [and/]or night milking;

(d) Provide sufficient air space and air circulation to prevent condensation and excessive odors;

(e) Not be overcrowded; and

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

(3) Milking barn or parlor cleanliness. The interior shall be kept clean. Floors, walls, ceilings, windows, pipelines, and equipment shall be clean and free of filth [and/]or litter. Swine and fowl shall be kept out of the milking area.

(4) Goat yard. The goat yard shall be graded and drained, and shall have no standing pools of water or accumulations of organic wastes. In loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities. A milk house or room shall be a [of] sufficient size for [shall be provided, in which] the cooling, handling, storing, and packaging of milk; and the washing, sanitizing, and storing of milk containers and utensils, [shall be conducted:] except as provided for in subsection (12) of this section.

(a) The milk house shall have [be provided with] a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(b) [The] Walls and ceilings shall be constructed of smooth material, in good repair, and well painted or finished in an equally suitable manner.

(c) The milk house shall have adequate natural [and/]or artificial light and be well ventilated.

(d) The milk house shall be used for only [no other purpose than] milk house operations; there shall be no direct opening into a [any] barn, stable, or [into a] room used for domestic purposes. A direct opening between the milk house and milking barn, or parlor is permitted if [when] a tight-fitting, self-closing solid door hinged to be single or double acting is provided.

(e) Potable water under pressure shall be piped into the milk house.

(f) The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities.

(g) Bottling [and/]or packaging may be carried out in the milk room if [provided] it is done in a sanitary manner and by a method which prevents contamination.

(6) Milk house or room cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, and equipment [and other milk room equipment] shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(7) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or [of] contaminate the [any] water supply.

(8) Water supply. Water for milk house and milking operations shall be from a supply properly located, protected, and operated; and shall be easily accessible, adequate, and of a safe, sanitary quality.

(a) No cross-connection shall exist between a safe water supply and an [any] unsafe or questionable water supply, or any other source of pollution.

(b) The well or other source of water shall be located and constructed to prevent [in such a manner that neither] underground or [nor] surface contamination from a [any] sewerage systems, privy, or other source of pollution from reaching the [can reach such] water supply.

(c) [New] Individual water supplies and water supply systems which have been repaired or [otherwise] become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before a [any] sample for bacteriological testing shall be collected.

(d) All containers and tanks used in the transportation of water

shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(e) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure, if a [~~and when any~~] repair or alteration of the water supply system has been made, and at least every year.

(9) Utensils and equipment construction. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be [~~so~~] constructed for easy cleaning [~~as to be easily cleaned~~]. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall be [~~have been~~] manufactured, packaged, transported, and handled in a sanitary manner and shall comply with [~~the applicable~~] requirements of subsection (11) of this section. Articles intended for single-service use shall not be reused. Containers for purchasing milk may be provided by the person[~~(s)~~] purchasing the milk; in which case, the containers shall not be washed, sanitized, or stored at the farm.

(10) Utensils and equipment cleaning. The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(11) Utensils and equipment sanitation. The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each use.

(12) Utensils and equipment storage. All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and [~~shall be~~] protected from contamination prior to use. Pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers, and milk pumps which are designed for mechanical cleaning may be stored in the milking barn or parlor if [~~provided~~] this equipment is designed, installed, and operated to protect the product and solution-contact surfaces from contamination at all times.

(13) Utensils and equipment handling. After sanitization, all containers, utensils, and equipment shall be handled in a [~~such~~] manner [~~as~~] to prevent contamination of a [~~any~~] product-contact surface.

(14) Milking flanks, udders, and teats. Milking shall be done in the milking barn or parlor. The flanks, udders, and bellies of all milking goats shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution [~~just~~] prior to milking, and shall be dry before milking. Wet hand milking is prohibited.

(15) Milking surcingles, milk stools, and antikickers. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

(16) Protection from contamination. The milking area, [~~and~~] milk house operations, and equipment shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination. Hand capping of bottles, containers, or packages may be done if [~~whenever~~] volume does not cause this to be impractical and [~~provided~~] protection from contamination is maintained.

(17) Personnel handwashing facilities. Adequate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(18) Personnel cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking or [~~before~~] performing any milk house function, and immediately after the interruption of any of these activities. Milkers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk shall be cooled to forty-five (45) degrees Fahrenheit [~~(seven (7) degrees Celsius)~~] or less within two (2) hours after milking. The blend temperature after the first milking and subsequent milkings shall [~~does~~] not exceed fifty (50) degrees Fahrenheit [~~(ten (10) degrees Celsius)~~].

(20) Insect and rodent control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, [~~and~~] rodents, and [~~by~~] chemicals used to control [~~such~~] vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

Section 7. Animal Health. (1) All milk shall be from herds which are free from tuberculosis and brucellosis.

[~~(2) Herds shall be tested annually for tuberculosis and any reactors disposed of in accordance with Department of Agriculture requirements.~~

~~(3) Herds shall participate in a brucellosis milk ring testing program which is conducted by the Department of Agriculture.~~]

(a) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the goat herd have been found to be infected with tuberculosis. This requirement is in accordance with the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", February 3, 1989, for establishing and maintaining tuberculosis-free herds of goat and modified accredited areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is not located in a modified accredited area, it shall be tested annually under the jurisdiction of the program. Additions to the herd shall be from a modified accredited area or from herds meeting the requirements of this administrative regulation. Copies of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(b) Brucellosis test. The herd shall be located in an area within the state in which the percentage of the goat herd affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This requirement is in accordance with the "Brucellosis Eradication, Uniform Methods and Rules", May 6, 1992, for establishing and maintaining certified brucellosis-free areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is located in an area that does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. Additions to the herd shall be from herds meeting the requirements of this administrative regulation. Copies of the "Brucellosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(2) [~~(4)~~] The cabinet shall require [~~such~~] physical, chemical, or bacteriological tests [~~as deemed~~] necessary to prevent the spread of [~~other~~] diseases or the contamination of the milk with pathogenic organisms.

(3) [~~(5)~~] A certificate identifying test results of each animal, signed

by a veterinarian, shall be submitted to the cabinet for each test required by this section.

(4) [(6)] Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 8. Milk Which May Be Sold. Goat milk sold at a farm permitted under this administrative regulation shall be limited to milk produced at the particular farm and no milk shall be transferred from one farm to another or delivered from the farm to another place or location for sale.

Section 9. Construction Plan. Properly prepared plans for all milking barns, parlors, and milk houses shall be submitted to the cabinet for written approval prior to a permit being issued.

Section 10. Personnel Health. No person affected with a [any] disease in a communicable form, or while a carrier of [such] disease, shall work at the farm in any capacity which brings him in contact with the handling, storage, or sale of milk, containers, equipment, and utensils. [and] No farm operator shall employ in any [such] capacity a [any such] person[, or any person] suspected of having a [any] disease in a communicable form, or of being a carrier of a communicable [such] disease. An [Any] owner of a dairy farm on which a [any] communicable disease occurs, or who suspects that an [any] employee has contracted a [any] disease in a communicable form, or has become a carrier of a [such] disease, shall notify the cabinet immediately.

Section 11. Procedure If [When] Infection is Suspected. If [When] reasonable cause exists to suspect the possibility of transmission of infection from a [any] person concerned with the handling of milk, the cabinet shall [is authorized to] require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling;

(2) The immediate exclusion of the milk supply concerned from distribution and sale;

(3) Adequate medical and bacteriological examination of the person[(s)], involved in milk production or handling activities.

Section 12. Disclaimer. Milk produced [with]in compliance with [of] the requirements of this administrative regulation does not assure the absence of pathogenic organisms.

Section 13. Hearing Procedure. (1) Upon notification of intent to suspend or upon suspension, the producer may request a hearing. The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-8, "Request for Hearing", is incorporated by reference and may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 18, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee

(1) Type and number of entities affected: One goat farm at present. Makes KRS Chapter 13A changes.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No revenue generated.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 55:065. Return of prescription drugs prohibited, exceptions.

RELATES TO: KRS 217.005 to 217.215, 217.992

STATUTORY AUTHORITY: KRS 194.050, 211.090, 217.125

NECESSITY AND FUNCTION: KRS 217.125 authorizes the Cabinet for Human Resources to administer the provisions of [the Kentucky Food, Drug and Cosmetic Act,] KRS 217.005 to 217.215 [217.219] and 217.992. The purpose of this administrative regulation is to prevent the dispensing of prescription drugs that may be adulterated or misbranded.

Section 1. Return of Prescription Drugs Prohibited; Exceptions. (1) No pharmacist, practitioner, or agent thereof shall accept the

return of a prescription drug for reuse or resale unless:

(a) The drug is in a sealed container by which it can be readily determined by a pharmacist employed by the dispensing pharmacy or by the dispensing practitioner that entry or attempted entry by any means has not been made;

(b) The drug container meets the standards of the United States Pharmacopoeia for storage conditions including temperature, light sensitivity, moisture, chemical, and physical stability;

(c) The drug labeling and packaging has not been altered or defaced and the identity of the drug, its potency, lot number, and expiration date are legible;

(d) The drug does not require refrigeration; and

(e) The drug is returned to a pharmacist employed by the dispensing pharmacy or to the dispensing practitioner within fourteen (14) days.

(2) Subsection (1) [~~(f) Paragraphs~~] (d) and (e) of this [~~sub~~]section shall be waived if all other conditions are met and if:

(a) [~~1.~~] The drug was dispensed for a patient in a health care facility licensed by the Cabinet for Human Resources;

(b) [~~2.~~] The drug has not come into the physical possession of the person for whom it was prescribed;

(c) [~~3.~~] The drug has been under the continuous control of personnel in the health care facility who are trained and knowledgeable in the storage and administration of drugs;

(d) [~~4.~~] The drug has been properly stored in an area which is regularly inspected by a pharmacist; and

(e) [~~5.~~] The drug is not expired.

(3) [~~(g)~~] Drugs distributed within an acute care facility shall be exempt from the provisions of subsection (1) [~~paragraphs~~] (a), (d) and (e) of this [~~sub~~]section.

(4) [~~(2)~~] Nothing in this administrative regulation shall be construed to require a [~~any~~] pharmacist or practitioner to accept the return of a [~~any~~] prescription drug.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: September 27, 1993

FILED WITH LRC: December 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: This amendment has no effect as the changes are only those required by KRS Chapter 13A.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings because the amendments are merely changes in format or wording as required by KRS Chapter 13A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because this amendment reorganizes a regulation that has been in effect for several years.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with KRS Chapter 13A would result.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. While the federal Food, Drug and Cosmetic Act prohibits the adulteration and misbranding of drugs, it does not specifically address the return of prescription drugs which are to be reused or resold.

2. State compliance standards. This regulation allows prescription drugs to be returned for reuse or resale only under limited conditions. This prevents the dispensing of drugs that may have become adulterated or misbranded.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 55:070. Storage of controlled substances in an emergency medication kit in certain long-term care facilities.

RELATES TO: KRS 218A.180, 218A.200 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to authorize the storage in an emergency medication kit in certain long-term care facilities of limited quantities of controlled substances to be administered if [~~when~~] prescribed by a physician.

Section 1. Storage of Controlled Substances in an Emergency Medication Kit. A pharmacy provider may store controlled substances in an emergency medication kit in a nursing home, nursing facility, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded if [~~provided that~~]:

(1) The written policies and procedures of the facility regarding the procurement, use, storage, security, replacement, and record-

keeping of controlled substances in the kit are filed with the facility and with the provider pharmacy;

(2) [~~The controlled substances stored in the kit are obtained from a single source;~~

~~(3)~~] The controlled substances in the kit are the property of the provider pharmacy who is responsible for their proper labeling, storage, security, and accountability;

(3) [~~(4)~~] The controlled substances stored in the kit are selected jointly by the facility's medical director or other physician, consultant pharmacist, and the director of nursing;

(4) [~~(5)~~] The controlled substances selected for inclusion in the kit are injectable and limited to two (2) doses each of three (3) different controlled substances;

(5) [~~(6)~~] The controlled substances in the kit are administered only upon the order of a physician who determines that the patient has an immediate medical need;

(6) [~~(7)~~] The access to the controlled substances in the kit is limited to a physician, pharmacist, registered nurse, or other person authorized by law in this state to administer the prescribed medication;

(7) [~~(8)~~] The provider pharmacy is notified by the facility within twenty-four (24) hours after the kit has been opened;

(8) [~~(9)~~] The prescribing physician issues a written prescription for the controlled substances to the provider pharmacy within seventy-two (72) hours after administration of a controlled substance from the kit;

(9) [~~(10)~~] The facility maintains a record of the administration of controlled substances from the kit in accordance with applicable state and federal laws;

(10) [~~(11)~~] The provider pharmacy documents a physical inventory of the controlled substances in the kit at least monthly; and

(11) [~~(12)~~] The loss of any controlled substance from the kit is reported to the Cabinet for Human Resources in accordance with KRS 218A.200(4) and to the Federal Drug Enforcement Administration in accordance with 21 CFR 1301.74(c).

Section 2. The Cabinet for Human Resources may deny, suspend, or revoke the privilege of storing controlled substances in an emergency medication kit if any provision in Section 1 of this administrative regulation is violated.

(1) Upon notification of intent to deny, suspend or revoke the pharmacy provider may request a hearing. The request for a hearing shall be made in writing on Form DCB-2, "Request for Hearing," and received by the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DCB-2, "Request for Hearing," revised October, 1993, is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.

(2) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The hearing officer's decision shall be the final decision of the cabinet.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: September 27, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: This amendment is to conform with the requirement of KRS Chapter 13A and the federal policy for controlled substances in emergency kits.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings because the amendments are changes in format or wording as required by KRS Chapter 13A and the addition of Section 2 to conform with federal policy.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because this amendment reorganizes a regulation that has been in effect for several years.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with KRS Chapter 13A would result.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The related federal requirements were issued in a Statement of Policy (45 Fed. Reg. 40576, June 16, 1980).

2. State compliance standards. In order to comply with this regulation a long-term care facility must adopt policies and procedures which define: (a) the source of controlled substances, (b) proper security and limited access, (c) the specific controlled substances to be utilized, (d) the circumstances under which the controlled substances may be administered, and (e) the recordkeeping required to meet all federal and state laws and regulations.

3. Minimum or uniform standards contained in the federal

mandate. Same as compliance standards listed above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(2) "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(3) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(4) "Principal wage earner" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for AFDC benefits based on the deprivation of unemployment.

(5) "Prior labor market attachment" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for AFDC benefits based on the deprivation of unemployment.

(6) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 3. Enumeration. (1) Each person included in the AFDC case shall furnish his Social Security number [~~card~~] or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number [~~card~~] or apply for a number shall result in the ineligibility of the person whose Social Security number is not verified.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4.Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship.

(a) AFDC shall be provided only to:

1. [~~(a)~~] Citizens;

2. [~~(b)~~] Aliens lawfully admitted for permanent residence; or

3. [~~(c)~~] Aliens otherwise permanently residing in the United States under color of law.

(b) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall meet the definition of deprivation as specified in Section 1 of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of thirty (30) days or more;
5. Forced separation of seven (7) days or more; or
6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(a) Incapacity exists in a case when the following criteria are met:

1. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

a. Present at the time of application; and

b. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

2. The thirty (30) day period may include a period in which the claimant is undergoing:

a. Planned diagnostic studies; or

b. Evaluation of rehabilitation potential; and

3. It is determined by nonmedical evaluation that the defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(b) A determination regarding incapacity shall be made by:

1. Field staff if the criteria specified in 904 KAR 2:040, Section 3(2) is met; or

2. The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(c) Factors to be considered by the medical review team in making the medical determination shall include:

1. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

2. Competent medical testimony relevant to:

a. Whether a physical or mental defect, illness or impairment exists;

b. Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

c. Whether the defect, illness or impairment is likely to last thirty (30) days.

(d) Factors to be considered in making the nonmedical evaluation shall include:

1. The claimant's:

a. Age;

b. Employment history;

c. Vocational training;

d. Educational background; and

e. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

2. The extent and accessibility of employment opportunities available in the claimant's area of residence.

(e) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of disabled individuals shall be taken into account; and

1. Available printed materials that provide information regarding available employment opportunities shall be researched;

2. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

3. The claimant shall be referred, if necessary, for further appraisal of his abilities.

(f) A written report shall be made of the determination under this subsection.

(g) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(2) The determination of the principal wage earner (PWE) shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

b. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) Prior labor market attachment (PLMA) shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1(5) of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in Community Work Experience Program (CWEP) or Work Incentive Program (WIN) prior to October 1, 1990, and in the Job Opportunities and Basic Skills (JOBS) Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) [~~Has not applied for unemployment benefits, if potentially eligible;~~

~~(g)~~] Is not:

1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to JOBS, as specified in 904 KAR 2:370; or

(g) [~~(h)~~] Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC- UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 10. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) A relative of the half-blood;

(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;

(5) Any person listed in subsections (1) through (4) of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For AFDC eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) If the specified relative continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;

(b) Attendance at boarding school;

(c) College or vocational school;

(d) Emergency foster care; or

(e) Short visits with friends or relatives.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;

3. Immigration records;

4. Naturalization records;

5. Church documents, such as baptismal certificates;

6. Passport;

7. Military records;

8. U.S. Census records; or

9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and

(b) The parent or caretaker relative provides a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the sworn statement or affidavit specified in subsection (2)(b) of this section will serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity will not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE and the second parent shall register for work with the Department for Employment Services (DES) if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370.

(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered for or is participating in JOBS.

Section 15. Job Opportunities and Basic Skills (JOBS) Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving AFDC based on the following voluntary absence deprivation factors:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities. This includes, but is not limited to:

(a) Identifying the absent parent;

(b) Providing information to assist in the location of the absent parent;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made, includes, but is not limited to, the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent or alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; and

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the absent or alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of AFDC; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or

3. Good cause does not exist.

(c) Advise the specified relative in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) The relative shall be ineligible for benefits; and

(b) The agency shall attempt to obtain a protective payee to administer the AFDC payment on behalf of the child.

(8) If, after the exclusion from the grant for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Add the specified relative to the case effective with the date the individual states he will cooperate;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an AFDC-UP case, failure to apply for another benefit or comply with its requirements results in ineligibility for AFDC.

(3) If a PWE in an AFDC-UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE and second parent shall have their needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the AFDC program, with the exception of JOBS participation, are being incorporated effective December [~~May~~] 1, 1993. These forms include:

(a) PA.1C Supplement D, revised 3/92;
(b) PA-14, revised 11/91;
(c) PA-33D, revised 1/92;
(d) PA-121, revised 8/87;
(e) [~~(c)~~] PA-125, revised 6/83;
(f) [~~(d)~~] PA-125 Supplement A, revised 6/83;
(g) [~~(e)~~] PA-125 Supplement B, revised 12/82; [~~and~~]
(h) PA-125.1, revised 5/90;
(i) [~~(f)~~] PA-511, revised 10/92;
(j) KA-125, revised 7/92;
(k) KA-125, Supplement A, revised 1/93;
(l) KA-125, Supplement B, revised 7/92;
(m) KA-125, Supplement C, revised 7/92;
(n) CS-333, revised 10/91; and
(o) CS-333.1, revised 9/86.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: There are four (4) changes, three (3) of which are clarifications of existing policy which do not affect any AFDC applicants or recipients.

1. Enumeration Policy - This is a clarification of existing enumeration policy, which is federally mandated. The applicant shall supply his Social Security number to the agency as a condition of eligibility.

2. Declaration of Citizenship or Alien Status - This is a clarification of the requirement of declaration of citizenship or alien status, which is federally mandated.

3. AFDC Common Law Marriage - This is a clarification of AFDC policy regarding common-law marriage. This allows a "common-law" parent to qualify as the specified relative of an eligible child.

4. AFDC - Unemployed Parent (UP) - This is a clarification to current policy in regard to work registration to include the requirement of the second parent to work register if living in a non-JOBS county or if living in a JOBS county but is exempt from participation due to remoteness.

5. AFDC - Unemployed Parent (UP) - This is a change in policy regarding UP parents who do not pursue UI benefits. Previously the case would have been considered ineligible. With this change the parents only are considered ineligible. This is a federal mandate. 64 cases for FY 92-93 were discontinued for failure to apply for UI benefits or comply with the requirements.

(a) Direct and indirect savings to those affected:

1. First year: (a) Enumeration Policy - None. (b) Declaration of Citizenship or Alien Status - None. (c) AFDC-Common-law Marriage - None. (d) AFDC-UP - Total increase in payments is estimated to be $103,480 annually, of which $30,009 is state dollars. This is due to the implementation of policy that requires AFDC-UP recipients to apply for UI benefits. (e) AFDC-UP - None on work registration policy.

2. Continuing cost or savings: (a) Enumeration Policy - None. (b) Declaration of Citizenship or Alien Status - None. (c) AFDC Common-law Marriage - None. (d) AFDC-UP - Same as year one. (e) AFDC-UP - Same as year one.

3. Additional factors increasing or decreasing cost (Note any effects upon competition): (a) Enumeration Policy - None. (b) Declaration Citizenship or Alien Status - None. (c) AFDC Common-law Marriage - None. (d) AFDC-UP - None. (e) AFDC-UP - None.

(b) Reporting and paperwork requirements: 1. Enumeration Policy - The agency matches the Social Security number against Social Security records. This requires less effort for the client. 2. Declaration of Citizenship or Alien Status.-None. 3. AFDC Common-law Marriage - None. 4. AFDC-UP - None. 5. AFDC-UP - None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost:

1. First year: Total increase in payments is estimated to be $103,480, of which $30,009 is state dollars. This is as a result of implementing new policy regarding AFDC-UP recipients who do not pursue UI benefits.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(2)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.101 - Unemployed Parent Program; 45 CFR 205.52 - Enumeration; 45 CFR 233.50 - Citizenship Declaration.

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. (1) AFDC Unemployed Parent- This is a change in policy regarding UP parents who do not pursue UI benefits. Previously the case would have been considered ineligible. With this change only the parents are considered ineligible. (2) Enumeration Policy- This is a clarification of existing enumeration policy, which is federally mandated. The applicant shall supply his Social Security number to the agency as a condition of eligibility. (3) Declaration of Citizenship or Alien Status- This is a clarification of requirement of declaration of citizenship or alien status, which is federally mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized [~~responsible~~] to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program (SSI). KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the SSI payment and other income for the current month.

(2) Recipients include former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December level.

(4) The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband [~~man~~] and wife living together, income changes after September, 1974, will result in an increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections [~~3.~~] 4, [~~and~~] 5, and 6 of this administrative regulation, meets technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified [~~as defined~~] in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified [~~as defined~~] in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for SSI, application for SSI shall be mandatory.

Section 3. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the ill or infirm individual to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) [~~when~~] The caretaker service is provided by the following persons living with the applicant:

1. [~~(a)~~] The spouse;

2. [~~(b)~~] Parent of an adult disabled child or a minor child; or

3. [~~(c)~~] Adult child of an aged or disabled parent.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service. [~~If potential eligibility exists, application for SSI shall be mandatory.~~]

Section 4. [~~3.~~] Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004.

(2) The individual or couple is not eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 5. [~~4.~~] Income Considerations. (1) Except as noted in subsections (2) through (9) [~~(8)~~] of this section, income and earned income deductions are [~~is~~] considered according to policies for the

medically needy in 907 KAR 1:004.

(2) The optional supplementation payment is determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 6 [5] of this administrative regulation.

(3) Income of the ineligible spouse is:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) shall be conserved for the spouse.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The SSI twenty (20) dollars general exclusion is not an allowable deduction from income.

Section 6. [5.] Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) For an eligibility determination for a resident of a personal care home[s] made on or after January 1, 1994, $780 [1993 $732];

(b) For an eligibility determination for a resident of a family care home[s] made on or after January 1, 1994, $585 [1993 $537];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or disabled made on or after January 1, 1994, $479 [1993 $467];

2. For an eligibility determination for an eligible couple, both aged, blind, or disabled and one (1) requiring care made on or after January 1, 1994, $697 [1993, $680];

3. For an eligibility determination for an eligible couple, both aged, blind or disabled and both requiring care made on or after January 1, 1994, $741 [1993 $724].

(2) In couple cases, when both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 7. [6.] Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. [during a temporary stay in] A hospital;

2. A [,] psychiatric hospital;

3. A [, skilled] nursing facility; and

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives SSI.

(2) If discharged in the month following the last month of continued benefits, the temporary absence continues through the date of discharge. [or intermediate care facility.]

Section 8. [7. Citizenship and Residency. (1)] Citizenship requirements. An applicant or recipient shall be:

(1) [(a)] A citizen of the United States; or

(2) [(b)] An alien legally admitted to this country for permanent residence; or

(3) [(c) For permanent residence] An alien who is residing in this country under color of law.

Section 9. [(2)] Residence Requirements. (1) [(a)] The applicant or recipient shall be a resident of Kentucky.

[(b) Except as specified in Sections 9 through 13 of this administrative regulation, the individual shall be residing in the state for other than a temporary purpose.

(c) Except as specified in Section 6 of this administrative regulation, the residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable.]

(2) [(3)] Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) [only when] The individual has been placed in the other state by this state.

(b) [(a)] Except with regard to the requirement shown in Section 7 [6] of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) [(b)] For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) [(c)] If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) [(d)] To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) [(4) The ability of the institutionalized individual to indicate intent to become a Kentucky resident shall be considered when determining residency of the individual. An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.] The applicant or recipient residing in a personal care home [individual] is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) [~~(5)~~] For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the [~~any noninstitutionalized~~] individual is:

(a) Under age twenty-one (21);

(b) Eligible [~~whose eligibility~~] for a supplemental payment [~~is~~] based on blindness or disability; and

(c) [~~, his state of residence shall be Kentucky if he is actually~~] Residing in the state; or

(d) An [~~. (6) For any noninstitutionalized~~] individual age twenty-one (21) or over and [~~, his state of residence shall be Kentucky if he:~~

~~(a) Is residing in the state; and~~

~~(b) Intends to remain permanently or for an indefinite period; or~~

~~(c) If~~] incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home [~~institutionalized individual living in Kentucky~~] who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home [~~institutionalized individual living in Kentucky~~] who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

[~~(9) For individuals subject to determinations of residency according to subsections (7) and (8) of this section, the state of residency shall be Kentucky if:~~

~~(a) The individual is residing in Kentucky; and~~

~~(b) A determination of residency applying those criteria does not show the individual to be a resident of another state.~~]

(9) [~~(10)~~] For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status. [~~If a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.~~

~~(11) For an institutionalized individual who is both age twenty-one (21) or over and capable of indicating intent, the state of residence shall be Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.~~

~~(12) Except as stated in subsections (3) through (11) of this section:~~

~~(a) An individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky; and~~

~~(b) An individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.~~]

(10) [~~(13)~~] An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) [~~(14)~~] A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky.

[~~(15) If the aged, blind, or disabled person resides in a personal care home or family care home is not licensed under KRS 216B.010 to 216B.131, he shall not be eligible for state supplementation.~~]

Section 10. [~~8.~~] Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The PCH shall meet the following criteria to qualify for a supplementation payment:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician (CMT) training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

(7) The PCH shall provide DSI with a monthly report.

(a) The report shall list:

1. All residents of the PCH who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. A star shall indicate a resident has a MI or MR diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month.

(8) The PCH shall notify DSI if its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment

accuracy.

Section 11. [9.] Training. (1) The PCH licensed nurse or individual who has successfully completed CMT training shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) MI or MR training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) Instruction in providing necessary activities to meet the needs of mentally ill or mentally retarded residents.

(3) Initial training shall include the licensed nurse or the individual who has successfully completed CMT training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR training; or

2. Is enrolled in the next scheduled MI or MR training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to DSI of staff who completed the training workshop.

(6) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR program.

Section 12. [10.] MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify eligibility to participate in the MI or MR supplement:

(a) The PCH's initial MI or MR certification may be separate from the annual survey;

(b) The initial MI or MR certification shall be in effect until the next licensure survey that can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side affects.

(3) ~~[The MI or MR training package shall be provided to the Division of Licensing and Regulation to assure survey staff are aware of what has been taught for MI or MR certification purposes.~~

~~(4)~~] The Division of Licensing and Regulation shall [~~also~~] review the PCH copy of the training certification prior to performing their record review during the MI or MR certification process.

(4) [~~(5)~~] If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The PCH is responsible for notifying DSI, within ten (10) working days, if the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) [~~(6)~~] The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(6) [~~(7)~~] The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 13. [~~11.~~] Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: 6,400 recipients of state supplementation benefits will be affected due to the increase in the state supplementation standards. Adding to the administrative regulation clarification of existing eligibility criteria for caretaker services, the requirement of providing a social security number, and information regarding allowable deductions from income will not adversely affect

the recipients of state supplementation since these provisions are currently used in determining eligibility for the State Supplementation Program.

(a) Direct and indirect cost or savings to those affected:

1. First Year: (a) The standards for state supplementation recipients increase by $48 for recipients in personal care homes and family care homes. Of this increase $12 is attributed to the cost of living increase and $36 to the $1.20 per diem increase.

(b) The standards for state supplementation for recipients of Caretaker Services increase by: single individual or individual with ineligible spouse - $12; couple (one or both requiring care) - $17.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: $1,000,000 cost, already anticipated in the state budget.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth through departmental policy.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. The increases in the standards are applied uniformly to all recipients of state supplementation. The department's pass-along agreement with the Social Security Administration mandates that the administrative process for state supplementation be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 20 CFR 416.2096

2. State compliance standards. This amended administrative regulation includes the 1994 cost of living increases to place Kentucky in compliance with federal SSI guidelines.

3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost of living increases.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), [~~250.33, 250.73, 255,~~] 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children (AFDC) Program, [~~, referred to as AFDC~~]. This administrative regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Benefit [~~Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.~~

~~(2) "Assistance~~] group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3.

(a) The benefit [~~assistance~~] group shall include:

1. The dependent child;

2. The [.] child's eligible parent; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) [~~Additionally,~~] If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit [~~assistance~~] group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) [~~(3)~~] "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(3) "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) [~~"Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.~~

~~(5)~~] "Claimant" means the individual responsible for an overpayment.

[~~(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program shall also include life skills, skills training or job readiness training.~~

~~(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on the job training, or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.~~

~~(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for~~

~~removal of barriers takes place.~~]

(5) [~~(9)~~] "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(6) [~~(10)~~] "Deduction" means an amount subtracted from gross income to determine countable income.

(7) [~~(11)~~] "Excluded income" means income that is received but not counted in the gross income test.

(8) [~~(12)~~] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) [~~(13)~~] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in and adult basic education (ABE) program, a General Educational Development (GED) program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time. [~~; or~~

~~(d) Eight (8) clock hours per month in a literacy program.~~

~~(e) Twenty-five (25) clock hours per week in combination programs.~~]

(10) [~~(14)~~] "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this administrative regulation.

[~~(15) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.~~]

(11) [~~(16)~~] "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(12) [~~(17)~~] "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(13) [~~(18)~~] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(14) [~~(19)~~] "Part-time school attendance" means a workload of anything less than "full-time school attendance."

[~~(20) "Precomponent" means a waiting period between the dates of component assignment and component commencement.~~

~~(21) "Preemployment" means a waiting period between the dates of hiring and employment commencement.~~]

(15) [~~(22)~~] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(16) [~~(23)~~] "Recoupment" means recovery of overpayments of assistance payments.

(17) [~~(24)~~] "Sanctioned individual" means any person who is required to be included in the benefit [~~assistance~~] group but who is excluded from the benefit [~~assistance~~] group due to failure to fulfill an eligibility requirement.

[~~(25) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.~~

~~(26) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:~~

~~(a) The case is not discontinued due to fraudulent activity; and~~

~~(b) The case is not discontinued due to failure to comply with procedural requirements; and~~

~~(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.~~]

(18) [~~(27)~~] "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

[~~(28) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.~~]

(19) [~~(29)~~] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit [~~assistance~~] group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit [~~assistance~~] group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (3) of this section [~~as follows~~]:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Equity value up to $1,500 for one (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of supplemental security income (SSI) or the state supplementation program (SSP) living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption. [~~Home furnishings, including all appliances;~~

~~(c) Clothing;~~

~~(d) One (1) motor vehicle, not to exceed $1,500 equity value;~~

~~(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;~~

~~(f) Items valued at less than fifty (50) dollars each;~~

~~(g) One (1) burial plot or space per family member;~~

~~(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;~~]

(i) Real property which the benefit [~~assistance~~] group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit [~~assistance~~] group shall agree to repay AFDC benefits received beginning with the first month of the exemption.

2. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the AFDC grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of AFDC grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an IRA, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per AFDC family member;

(t) $1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to $12,000 to Aleutians and $20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit (EITC) payments in the month of receipt and the following month; and

(y) Any payment received from the Radiation Exposure Compensation Trust Fund. [~~Other items or benefits mandated by federal regulations.~~]

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. [~~If~~] It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. [~~if~~] The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit. [~~limitation, the household's application shall be denied, or assistance discontinued.~~]

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the AFDC client.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the AFDC client's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the AFDC client's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine client's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the client's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the client asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the client's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the client's name has been removed from the resource.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit [~~assistance~~] group;

2. Income of a parent who does not receive SSI;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit [~~assistance~~] group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit [~~assistance~~] group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit [~~assistance~~] group has not received assistance during the four (4) months prior to the month of application.

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard set forth in Section 7 of this administrative regulation.

(c) If income exceeds this standard, the benefit [~~assistance~~] group is ineligible.

(d) For a benefit group which meets [~~assistance groups who meet~~] the gross income test but has [~~who have~~] received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit [~~assistance~~] group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit [~~assistance~~] group's income, after subtracting excluded income and applicable deductions, exceeds the benefit [~~assistance~~] standard, the benefit [~~assistance~~] group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group [an applicant or recipient] whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need for the benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the benefit [assistance] group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit [assistance] group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the AFDC household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-AFDC income received or anticipated to be received by the benefit [assistance] group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit [assistance] group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit [assistance] group, as set forth in Section 5 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 6 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in specified programs [the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program] under the Job Training Partnership Act (JTPA) program for a period not to exceed six (6) months within a given calendar year. These programs are:

1. Summer youth;

2. Limited work experience;

3. Work experience; and

4. Tryout employment; [, effective March 1, 1988;]

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of [the monthly allotment of food stamp coupons or value of] United States Department of Agriculture (USDA) program benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

(h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017; [donated foods;]

(j) [(g)] Nonemergency medical transportation payments;

(k) [(h)] Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(l) [(i)] Educational grants, loans, scholarships, including:

1. Payments [for actual educational costs made under the GI Bill,] obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) [(j)] Highway relocation assistance;

(n) [(k)] Urban renewal assistance;

(o) [(l)] Federal disaster assistance and state disaster grants;

(p) [(m)] Home produce utilized for household consumption;

(q) [(n)] Housing subsidies received from federal, state or local governments;

(r) [(o)] Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) [(p)] Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

[(q) Benefits received from the Nutrition Program for the Elderly, under 42 USC 3001;]

(t) [(r)] Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. [as] Foster grandparents;

2. Senior health aides; [or]

3. Senior companions; [and to persons serving in]

4. Service Corps of Retired Executives (SCORE); and

5. Active Corps of Executives (ACE); [and any other programs under 42 USC 5001 and 5011;]

(u) [(s)] Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less [except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater] than the minimum wage under state or federal law, whichever is greater;

[(t) The value of supplemental food assistance received under 42 USC 1771, and the special food service program for children under 42 USC 1755, as amended;]

(v) [(u)] Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care;

(w) [(v)] Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(x) [(w)] The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(y) [(x)] For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(z) [(y)] Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(aa) The principal of a verified loan;

(bb) [(z)] Effective January 3, 1989, loans;

(aa) Effective June 1, 1989,] Up to $12,000 to Aleuts and $20,000

to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(cc) Income of an individual receiving SSI;

(dd) [~~(bb) Effective June 1, 1989,~~] The essential person's portion of the SSI check;

(ee) [~~(cc)~~] Income of an individual receiving mandatory or optional state supplementary payments;

(ff) [~~(dd)~~] The advance payment or refund of earned income tax credit (EITC);

[~~(ee) Other benefits mandated by federal regulations or legislation; and~~

~~(ff) The difference between the standard of need and the payment maximum for the assistance group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend.~~]

(gg) Payments made directly to a third party on behalf of the client by a nonresponsible person;

(hh) Child support received in a month for which the AFDC payment is suspended;

(ii) In-kind income;

(jj) Income of a technically ineligible child;

(kk) Payments made from the Agent Orange Settlement Fund;

(ll) AFDC back payments;

(mm) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(nn) Payments made from the Radiation Exposure Compensation Trust Fund; and

(oo) Up to $2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed:

1. $175 per month per individual for full-time employment; or

2. $150 per month per individual for part-time employment; or

3. $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of [~~each individual's~~] earned income not already deducted for each member of the benefit group.

1. [~~, if that individual's needs are considered in determining the benefit amount.~~] The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and [~~, however, it shall be extended~~] for an additional eight (8) consecutive months following the expiration of the concurrent period. [~~four (4) months referenced in the preceding sentence.~~]

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Deductions from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the [~~such~~] employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this [~~such~~] work in the community was not made; or

5. [~~Effective February 1, 1988,~~] The child care arrangement is terminated through no fault of the client; or

6. [~~Effective February 1, 1988,~~] The available child care does not meet the needs of the child, for example, a disabled child; [~~handicapped or retarded children;~~] or

7. The parent is temporarily absent from work on approved educational leave; or

8. The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or

9. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase [~~increases~~] in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit [~~assistance~~] group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent. [~~Income and resources of a stepparent living in the home with a dependent child, the spouse of a minor dependent child, and parent living in the home with a minor parent but whose needs are not included in the grant are considered as follows:~~]

(2) [~~(1)~~] Income. The gross income of the individual is considered available to the benefit [~~assistance~~] group, subject to the following deductions:

(a) The first ninety (90) [~~seventy five (75)~~] dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for The appropriate family size, for:

1. The support of the individual; and

2. [~~stepparent, spouse of a minor dependent child, or parent of a minor parent and~~] Any other person [~~individuals~~] living in the home if:

a. His [~~but whose~~] needs are not taken into consideration in the

AFDC eligibility determination; and

b. He is [~~are~~] or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual. [~~stepparent, spouse of a minor dependent child, or parent of a minor parent as dependents for purposes of determining his federal personal income tax liability;~~]

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual; [~~stepparent, spouse of a minor dependent child, or parent of a minor parent to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his personal income tax liability;~~]

(d) Payments for alimony or child support to a person not living in the home by the individual; or [~~stepparent, spouse of a minor dependent child, and parent of a minor parent for alimony or child support with respect to individuals not living in the household; and~~]

(e) Income of an SSI recipient who is listed in subsection (1) of this section [~~a stepparent, spouse of a minor dependent child, or parent of a minor parent receiving Supplemental Security Income (SSI)~~].

(3) [~~(2)~~] Sanction exception. The income [~~needs~~] of any sanctioned individual is [~~are~~] not eligible for the deductions listed in this section.

(4) [~~(3)~~] Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit [~~or the assistance~~] group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions [~~as~~] set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit [~~assistance~~] group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of:

a. The sponsor; and

b. Other persons living in the household:

(i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is subtracted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

	Effective July 1, 1989	
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person [~~child~~]	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

[~~Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) With the exception of payments described in subsections (8) and (12) of this section those individuals participating in the JOBS program shall be entitled to payment of:~~

~~(a) Child care;~~

~~(b) Transportation; and~~

~~(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.~~

~~(2) JOBS activities are described in 904 KAR 2:006, Section 9.~~

~~(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:~~

~~(a) Precomponent;~~

~~(b) Component preparation;~~

~~(c) Component participation;~~

~~(d) Preemployment; or~~

~~(e) On the job training (OJT) participants discontinued from AFDC, until the end of the component placement.~~

~~(4) Child care eligibility in self initiated activities.~~

~~(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:~~

~~1. OJT participants discontinued due to increased earnings or hours of employment;~~

~~2. Component preparation; and~~

~~3. Precomponent, for persons waiting to enter self initiated activities for the first time.~~

~~(b) Child care shall be provided only for approved self initiated activities.~~

~~(5) Child care limitations.~~

~~(a) Child care payments shall:~~

~~1. Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.~~

~~2. Be allowed as a deduction as outlined in Section 4(2)(d) of this~~

regulation for any component yielding earned income.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. A member of the AFDC assistance unit which includes the child needing care;

4. Not meeting applicable standards of state and local law; or

5. Not allowing parental access.

(c) Local market rates shall be determined by:

1. The type of provider;

2. The age of the child;

3. The special needs of the child. Special needs shall be verified by:

a. Entitlement to disability benefits; or

b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full time (FT) and part time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age (6) six;

5. "School age" includes children age (6) six and over.

(f) For needs incurred on or after April 1, 1992, child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	13	10	13	10
Certified	$12	12	12	9	12	9	12	9	12	9
Unregulated	$11	11	11	8	11	8	11	8	11	8

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	11	8	11	8	11	8
Certified	$12	12	12	9	10	7	10	7	10	7
Unregulated	$11	11	11	8	9	6	9	6	9	6

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$15	15	15	12	15	12	14	11	12	9
Certified	$14	14	14	11	14	11	13	10	11	8
Unregulated	$13	13	13	10	13	10	12	9	10	7

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$16	16	16	13	14	11	14	11	13	10
Certified	$15	15	15	12	13	10	13	10	12	9
Unregulated	$14	14	14	11	12	9	12	9	11	8

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	11	8	9	6	9	6
Certified	$11	11	11	8	10	7	8	5	8	5
Unregulated	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	9	6	9	6	9	6	9	6
Certified	$10	10	8	5	8	5	8	5	8	5
Unregulated	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	11	8	11	8
Certified	$12	12	12	9	12	9	10	7	10	7
Unregulated	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

Special Pre-school

	Needs		Infants		Toddlers		school		aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	11	8	11	8	11	8
Certified	$10	10	10	7	10	7	10	7	10	7
Unregulated	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	10	7	10	7	10	7	10	7
Certified	$10	10	9	6	9	6	9	6	9	6
Unregulated	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-school		School aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year post-secondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full time and part time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and

2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation, with the exception of OJT while the AFDC case remains active;

(d) Transitional extension; or

(e) On the job training (OJT) participants discontinued from AFDC, until the end of the component placement.

(9) Transportation payments in self initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

3. Transitional extension; or

4. OJT participants discontinued from AFDC, until the end of the component placement.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;

2. Necessary clothing; or

3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment; or

(c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;

2. Component related;

3. Transitional extension; or

4. OJT participants discontinued due to increased earnings or hours of employment.

(b) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS

~~activities, as specified in 904 KAR 2:006; or~~

~~(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.]~~

Section 8. ~~[9.]~~ AFDC Recoupment. Except for those overpayments in ~~[Section 10 of this]~~ administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 9. Avoiding an Overpayment. (1) An AFDC recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the client is due a refund as described in Section 10 of this administrative regulation.

Section 10. Refund. A client shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the client;

(3) A client voluntarily returns an AFDC check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the AFDC check was intended to cover, leaving a balance owed to the client.

~~[Section 10. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments.~~

~~(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:~~

~~(a) Of fraud;~~

~~(b) Involving a current recipient; and~~

~~(c) In which the overpayment would equal or exceed the cost of recovery.~~

~~(2) An overpayment shall be recovered through:~~

~~(a) Repayment by the individual to the cabinet; or~~

~~(b) Reduction in child care payments; or~~

~~(c) Reduction of AFDC benefits only upon a voluntary request of the recipient family.~~

~~(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.~~

~~(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.]~~

Section 11. Correction of Underpayments. The following provisions apply to all AFDC payments:

(1) The department shall promptly correct an underpayment to:

(a) A current AFDC recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 12. Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the AFDC program ~~[verification of child care and supportive service payments in the JOBS program]~~ are incorporated effective December 1, 1993 ~~[October 1, 1990]~~. These forms include:

(a) PA-30.2, revised 7/85;

(b) PA-35, revised 2/91;

(c) PA-36, revised 1/85;

(d) PA-412, revised 1/91; and

(e) PA-415, revised 11/89. ~~[the PA-33, revised 10/90, the PA-33.1, revised 10/90, and the PA-32, revised 10/90.]~~

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: This amendment removes information regarding the Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services from 904 KAR 2:016 and places it in 904 KAR 2:017. The amendment also clarifies existing policy as it relates to subsidized adoption children, ineligibility periods

and overpayments and refunds. We have also added new policy relating to student aid granted by the Bureau of Indian Affairs and exclusion of up to $2,000 in income from Indian owned trust or restricted lands. Finally, we are adding new policy to increase the work expense standard of individuals not included in the benefits group from $75 to $90. The relocation of the JOBS information to a newly created administrative regulation will have no effect on JOBS participants. The new policy regarding student aid and exclusion of up to $2,000 in income from Indian owned trust or restricted lands should have no affect on AFDC recipients either. The only amendment that will affect any entities is the change in the work expense standard of individuals not included in the benefit group from $75 to $90. This change in standard will affect approximately 1,015 households. The change in grants will show an increase of $7,019 per month or an average of $7 per case a month.

(a) Direct and indirect cost or savings to those affected:

1. First year: The savings to those affected will be about $7 a month or $84 a year.

2. Continuing cost or savings: Provided that budgeting policy does not change, the same savings should continue.

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Cost.

(a) Direct and indirect cost or savings: The total cost of this change is $7,019 a month or $84,228 a year. The state share is $25,622 based on a state/federal match of 30.42/69.58.

1. First year: See above

2. Continuing cost or savings: See below

3. Additional factors increasing or decreasing costs: If match amounts change continuing costs could fluctuate either higher or lower.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering. Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with Federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. We have added new policy as it relates to excluding student aid granted by the Bureau of Indian Affairs and exclusion of up to $2,000 of income from Indian owned trust or restricted lands. These two changes are mandated by PL 103-66 Section 13736 and 13742. The change relating to increase in work expense standard for individuals not in the benefit group from $75 to $90 is also mandated in PL 103-66. The other clarifications in policy are just to expand current policy. In addition, we have completed formatting changes to bring the regulation into compliance with requirements of KRS Chapter 13A. We are removing information regarding the JOBS Child Care and Supportive Services from this regulation and placing it into a new proposed regulation.

2. State compliance standards. See Item 1.

3. Minimum or uniform standards contained in the federal mandate. See Item 1.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:020. Child support enforcement program: confidentiality and cooperative agreements.

RELATES TO: KRS 205.175, 205.712, 205.800, 45 CFR 303.21, 303.105, 303.107, 302.34 [~~Chapters 205, 405, 406, 407, 45 CFR Parts 301-307~~]

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800 [~~205.795~~], 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer [~~has responsibility for administering~~] the Child Support Enforcement Program (CSEP) in accordance with [~~Title IV-D of the Social Security Act and~~] KRS 205.710 to 205.800 [~~and 205.992~~]. The cabinet shall [~~is required by the Social Security Act to~~] make efforts to establish paternity and secure support from parents of children receiving public assistance as a result of desertion, [~~or~~] abandonment, [~~or due to~~] birth out-of-wedlock, and for other children on application. KRS 205.795 and 405.520 empower the secretary to adopt administrative regulations pertaining to the administration of the CSEP [~~Child Support Program~~]. This administrative regulation specifies the procedures for safeguarding information and entering into cooperative agreements. [~~the operation of the program.~~]

[~~Section 1. Definitions. In addition to the terms defined in KRS 205.710 the following terms shall be defined as set forth below:~~

~~(1) "AFDC recipient" means a child or caretaker relative who is receiving AFDC as prescribed by Title IV-A of the Social Security Act.~~

~~(2) "Cooperation" means the act of providing to the IV-D agency or the responsible local official any verbal or written information or documentation needed by the IV-D agency or local official for child support activities, and otherwise complying with the requirements of the Child Support Program.~~

~~(3) "Good cause" means that the public assistance recipient has a valid and acceptable reason (as determined by the cabinet) for failing to cooperate in activities related to the Child Support Program.~~

~~(4) "Nonpublic assistance individual" means any child or family who does not receive public assistance, but does receive child support services based on an application filed with the IV-D agency or with a responsible local official who has entered into a written agreement with the IV-D agency.~~

~~(5) "Responsible local official" means the elected or appointed official in a political subdivision who is legally responsible for law enforcement activities and has entered into a written agreement with the IV-D agency.~~

~~(6) "Title IV-D agency" means the organizational unit in the state that has responsibility for administering the Title IV-D (Child Support) Program.~~

~~(7) "Title IV-A agency" means the organizational unit in the state that has responsibility for administering the Title IV-A (AFDC) program.~~

~~(8) "Title IV-E agency" means the organizational unit in the state that has responsibility for administering the Title IV-E (foster care maintenance and adoption assistance) program.~~

~~(9) "Paternity blood tests" means those tests used in contested paternity actions including, but not limited to, ABO and human leucocyte antigen (HLA) tests administered by qualified laboratories or medical personnel.~~

~~Section 2. Compliance with Federal Regulations. The cabinet shall administer the Kentucky Child Support Program in accordance with Title IV-D of the Social Security Act and Title 45 CFR Sections 301, 302, 303, 304, 305, 306 and 307.~~

~~Section 3. Relation to Title IV-A Program. The cabinet shall administer the Kentucky Child Support Program, as the program relates to Title IV-A recipients, in accordance with regulations cited in Section 2 of this regulation and Title 45 CFR Sections 205, 232, 233, 234, and 235.~~

~~Section 4. Relation to Title IV-E Program. The cabinet shall administer the Kentucky Child Support Program, as it relates to Title IV-E recipients, in accordance with regulations cited in Section 2 of this regulation and Title 45 CFR Section 1356.~~

~~Section 5. Initiation of Support Action. Support activity shall be initiated upon referral of forms from the Title IV-A or Title IV-E agency or upon application of a nonpublic assistance individual to the IV-D agency or its authorized representative.]~~

Section 1. ~~[6.]~~ Safeguarding Information. The use or disclosure of information concerning an applicant or recipient of CSEP shall be limited to:

(1) The administration of the CSEP or other federal or federally assisted program which provides assistance or services directly to individuals on the basis of need; or

(2) An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in subsection (1) of this section. ~~[Pursuant to 45 CFR 303.21 and consistent with KRS 205.175 and 205.990, the cabinet may disclose information regarding recipients of child support services only to public officials or the recognized persons, such as private attorneys, acting on behalf of the recipients of child support services, who require the information for their official duties and to other persons and agencies involved with the administration of the Child Support Program or other federally assisted programs which provide cash benefits or services to needy individuals.~~

~~(1) Pursuant to 45 CFR 303.21(b), the IV-D agency may not disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient.~~

~~(2) Pursuant to 45 CFR 303.105 and consistent with KRS Chapter 205, the cabinet shall disclose arrearage information to consumer reporting agencies in cases where the overdue support is greater than $1,000. The cabinet may release arrearage information when the amount owed is less than $1,000.~~

~~(a) The consumer reporting agency shall submit a written request for such information to the cabinet.~~

~~(b) The cabinet may charge the consumer reporting agency a fee which may not exceed the cabinet's cost of providing the information.~~

~~(c) The cabinet shall notify the obligor of the proposed release of information. The notification shall inform the obligor of the methods available to contest the accuracy of the information.~~

~~(d) The obligor shall be given a minimum of twenty (20) days from the date of the above notice to contest the accuracy of the information.~~

~~Section 7. Establishing Paternity. In establishing paternity for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to paternity.~~

~~Section 8. Securing and Enforcing Support. In securing or enforcing support for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to support.~~

~~Section 9. Assignment of Support to IV-D Agency. (1) By accepting public assistance for or on behalf of a needy dependent child, a public assistance recipient assigns to the cabinet the right to all past due and future child support including any voluntary contributions made by the absent parent. Any support income received by AFDC recipients must be forwarded to the cabinet no later than the tenth day of the month following receipt.~~

~~(2) Nonpublic assistance recipients may assign their support rights to the cabinet, but these recipients are not required to make such an assignment.~~

~~Section 10. Agency Receipt of Support Payments. (1) When the support payment is made payable to the cabinet, money received is credited to the account of the obligor.~~

~~(2) If the amount of the current month's support collection or the court ordered amount, whichever is lower, exceeds the AFDC grant by fifty (50) dollars or more, the IV-D agency will notify the IV-A agency, as required by 45 CFR 302.32.~~

~~Section 11. Nonpublic Assistance Individuals. The IV-D agency will provide all services to individuals who are not recipients of public assistance benefits as provided in 45 CFR 302.33(a). The cabinet shall continue to provide IV-D services after the family's AFDC benefits have been discontinued unless the client requests discontinuance of IV-D services.~~

~~(1) An application fee for these services shall be paid in accordance with the following fee schedule:~~

~~YEARLY NET INCOME~~		~~FEE~~
~~$0 to $2,000~~	~~=~~	~~$5.00~~
~~2,001 to 3,000~~	~~=~~	~~8.00~~
~~3,001 to 4,000~~	~~=~~	~~10.00~~
~~4,001 to 5,000~~	~~=~~	~~13.00~~
~~5,001 to 6,000~~	~~=~~	~~15.00~~
~~6,001 to 7,000~~	~~=~~	~~18.00~~
~~7,001 to 8,000~~	~~=~~	~~20.00~~
~~8,001 to 9,000~~	~~=~~	~~23.00~~
~~9,001 to above~~	~~=~~	~~25.00~~

~~(2) In addition to the fees provided for in 42 USC 453(c)(2) and 463 regarding the federal parent locator service, the state may charge a fee for federal income tax refund intercept services in accordance with 45 CFR 303.72. Additionally, any other fee required by the federal government for services shall be collected by the IV-D agency from the applicant.]~~

Section 2. ~~[12.]~~ Cooperative Agreements. (1) As permitted by KRS 205.712(4) and 205.800, cooperative agreements initiated by the cabinet with local officials shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSEP;

(b) Specify clear and definite standards which meet federal requirements;

(c) Specify financial reimbursement arrangements including:

1. Budget estimate;
2. Covered expenditures;
3. Methods of determining costs; and
4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain appropriate reporting requirements;

(f) Contain the requirements for compliance with 31 USC 7502; and

(g) Provide the beginning and end dates of the cooperative agreement, review or renewal provisions, and termination circumstances. ~~[Pursuant to 45 CFR 302.34, 42 USC 654(7) and KRS 205.800, all eligible local officials may enter into a written agreement~~

~~with the cabinet to cooperate in activities relative to the Child Support Program when approved by the cabinet.~~]

(2) When officials enter into an agreement with the cabinet, federal financial participation (FFP) for child support activities shall be provided [~~pursuant to federal laws and regulations~~] when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the cooperative agreement.

(3) The officials shall provide the cabinet in timely fashion [~~such~~] statistical information concerning CSEP [~~IV-D~~] activities as prescribed by the cabinet and specified in the cooperative agreement [~~in the manner and form prescribed by the cabinet~~].

(4) If no agreement is executed, referrals for child support activities may be made to local law enforcement officials in accordance with the official's statutory obligations, but the officials shall [~~will~~] not be eligible for reimbursement as specified in subsection (2) of this section. [~~above.~~]

[~~Section 13. Distribution of Support Payments. Distribution of support payments received by the cabinet are made in accordance with 45 CFR 302.32, 302.38, 302.51, and 302.52. The first fifty (50) dollars, up to the obligation amount, of all child support collected in a month by the cabinet for an AFDC family which represents the current month's support obligation shall be forwarded to the family.~~

~~Section 14. Good Cause for Refusal to Cooperate. (1) The IV-D agency or its authorized representative shall immediately notify the IV-A agency when the recipient refuses to cooperate in support enforcement efforts. If the IV-A agency determines, pursuant to laws and regulations, that the recipient has a good cause for failing to cooperate and that pursuit of support action would be detrimental to the best interests of the child, the IV-D agency shall not pursue any action in the child's behalf.~~

~~(2) If the agency determines that the recipient has good cause for not cooperating but that additional support action would not harm the child, the IV-D agency may proceed in the name of the cabinet for the use of and in behalf of the minor dependent child pursuant to federal laws and regulations.~~

~~Section 15. Parent Locator Service. The cabinet shall use available resources to locate absent parents for children in the Child Support Program in accordance with Kentucky Revised Statutes and applicable federal laws and regulations.~~

~~Section 16. Paternity Blood Testing. Pursuant to 45 CFR 303.5(c) the IV-D agency shall identify laboratories within the state which perform legally and medically acceptable blood tests, including ABO and HLA tests, which tend to include or exclude an alleged father in paternity proceedings under KRS Chapter 406. The IV-D agency shall make a list of such laboratories available upon request. In addition, the cabinet shall provide a list of all such laboratories to the Kentucky Bar Association and to the Administrative Office of the Courts for distribution to appropriate agencies and individuals on an annual basis.~~]

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: This administrative regulation sets forth procedures for safeguarding information and entering into cooperative agreements. There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.10.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 320.34
2. State compliance standards. There are no additional or differing compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are safeguarding information standards and specific duties, functions and responsibilities of each contracting party.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects local contracting officials, usually county attorneys, and may affect fiscal courts if there is no abiding resolution between the contracting official and fiscal court. This is not a new service or requirement.

3. State the aspect or service of local government to which this administrative regulation relates. Safeguarding information and entering into cooperative agreements.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation sets forth the requirements for cooperative agreements with local officials to provide Child Support Enforcement Program services. As those are contracted services, local officials are paid by the Cabinet for Human Resources for the performance of these duties. Because the state match rate for expenditures to administer the Child Support Enforcement Program is 66 percent, 34 percent of the cost of providing child support services is funded by local government.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4)

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [has responsibility to] administer public assistance programs including [under Title IV-A and XIX of the Social Security Act, namely] Aid to Families with Dependent Children (AFDC) and mandatory and optional supplementation of [Medical Assistance (MA). In addition, the cabinet has responsibility to provide supplementation to] certain aged, blind and disabled individuals [as required by Title XVI, as amended, and by KRS 205.245. 45 CFR section 205.10(a)(4) and 45 CFR section 206.10(a)(4) require that applicants or recipients be provided adequate notice of adverse action in written form citing applicable state regulations]. This administrative regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

(a) State supplementation benefits; or

(b) AFDC benefits.

(2) "Application" means the process set forth in 904 KAR 2:035.

(3) "Recipient" means:

(a) An aged, blind, or disabled individual receiving state supplementation benefits; or

(b) A member of an AFDC assistance group as defined in 904 KAR 2:016.

Section 2. [1.] Reasons for Adverse Action. (1) An application shall be [is] denied if [or assistance discontinued or decreased when]:

(a) [(1)] Income or resources exceed the standards for the specific assistance program as set forth in 904 KAR 2:016 and 904 KAR 2:015[, or when income of a recipient increases or deductions decrease resulting in reduced or discontinued benefits];

(b) [(2)] The applicant [or recipient] does not meet technical eligibility criteria or fails [has failed] to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 and 904 KAR 2:370 [Chapters 1 and 2];

(c) Despite receipt of written notice detailing the additional information needed for a determination, [(3)] the applicant fails [or recipient has failed] to provide sufficient information or clarify conflicting information necessary for a determination of eligibility [despite receipt of written notice detailing the additional information needed for a determination];

(d) [(4)] The applicant fails [or recipient has failed] to keep the appointment for an interview;

[(5) The cabinet is recovering AFDC overpayments through recoupment; or]

(e) The applicant requests in writing [(6) Other reasons:

(a) Request of client, or] voluntary [written] withdrawal of application;

(f) Department [(b) Cabinet] staff is unable to locate the applicant [or recipient]; or

(g) The applicant is [(c) Applicant or recipient] no longer domiciled in Kentucky[;

(d) Change in program policy has adversely affected the recipient].

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 904 KAR 2:016 or 904 KAR 2:015;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 or 904 KAR 2:370;

(c) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;

(d) The recipient fails to keep the appointment for an interview;

(e) The cabinet is recovering AFDC overpayments through recoupment;

(f) Department staff is unable to locate recipient;

(g) The recipient is no longer domiciled in Kentucky;

(h) Change in program policy adversely affects the recipient; or

(i) For AFDC only, the grant amount is less than ten (10) dollars.

Section 3. Notification of [2.] Denial of Applications. If an application is denied, the applicant shall be [is] given:

(1) Written notification of the denial which shall include:

(a) [including] The reason for the denial; and

(b) The cites of the applicable state administrative regulation.

(2) The right to a fair hearing as provided by 904 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance. (1) The recipient shall be given ten (10) days advance notice of the proposed action [3. Decreases and Discontinuances.] if a change in circumstances indicates:

(a) [that] A money payment shall be:

1. Reduced;

2. Suspended; or

3. Discontinued; or

(b) An individual shall be removed from the AFDC grant, even if the grant increases.

(2) The [should be reduced, suspended or discontinued, or that medical entitlement should be discontinued or curtailed to any or all members, the recipient is given] ten (10) days advance notice of the proposed action shall:

(a) Be in writing;

(b) Explain [explaining] the reason for the proposed action;

(c) Cite the applicable state administrative regulation;

(d) Extend [and extending] the opportunity to confer with the worker or to request a fair hearing.

(3) A hearing request[s] received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 904 KAR 2:055, Section 4.

Section 5. [4.] Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be [is not] required, but written notice of action taken shall be [is] given, if the decrease or discontinuance results from:

(1) Information [is] reported by the recipient if [and] the recipient signs [has signed] a waiver of the notice requirement indicating understanding of the consequences;

(2) [The cabinet has received] A clear written statement, signed by the recipient, that he no longer wishes assistance is received by the department;

(3) [The cabinet has received] Factual information that the recipient, or an AFDC payee when there is no relative who can serve as a new payee, has died is received by the department;

(4) Whereabouts of the recipient are unknown and mail addressed to him is [has been] returned indicating no known forwarding address; however, a returned check shall [will] be made available to him if his whereabouts become known during the payment period covered by the returned check;

(5) Establishment by the agency [It has been established] that assistance has been accepted in another state;

(6) Removal [The AFDC child has been removed] from the home of an AFDC child by judicial order or voluntary placement [voluntarily placed] in foster care by his legal guardian;

(7) The aged, blind or disabled supplementation recipient enters [has entered] a nursing [chronic care] facility resulting in vendor payment status;

(8) The recipient enters:

(a) [has entered] A penal institution; or

(b) If under sixty-five (65), a tuberculosis hospital; or

(c) If between twenty-one (21) and sixty-five (65), a mental hospital;

(9) The granting of a special allowance, or time limited assistance, which:

(a) Shall be [is] terminated at the end of a specified period or under specific conditions; and [when]

(b) The recipient shall be [has been] informed in writing at the time the allowance or assistance is [was] granted of the automatic termination; and

(c) [at the end of a specified period or under specific conditions; in these situations] The notice may be provided at the time of approval, or subsequently[;

(10) The AFDC recipient has failed to provide a completed mandatory monthly report form timely; or

(11) The decrease, suspension or termination of benefits is due to changes reported on the mandatory monthly report form].

Section 6. Material Incorporated by Reference. (1) The form necessary for adverse action in the AFDC and Mandatory and Optional Supplementation Programs is being incorporated effective December 1, 1993. This form is the KIM-105, revised 9/92.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: This administrative regulation sets forth the conditions used in providing advance notice for adverse action for an application that is denied or assistance that is decreased or discontinued and does not establish the standards by which eligibility is determined for these applicants and recipients. Therefore, there is no fiscal impact to these applicants and recipients. Formatting changes are made to conform with drafting requirements.

(a) Direct and indirect cost or savings to those affected:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Tiering is not applied because Aid to Families with Dependent Children and the State Supplementation Program require uniformity in the application of policy.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 205.10(a)(4), 206.10(a)(4).

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are requirements to provide adequate notice of adverse action in written form to applicants and recipients.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. There are no stricter standards or additional requirements.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170, 45 CFR 205.32
STATUTORY AUTHORITY: KRS 13A.120, 194.050, 205.170
NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [has responsibility to] administer a money payment program under 42 USC-601, Aid to Families with Dependent Children (AFDC), [Title IV-A of the Social Security Act] and [to] provide supplemental payments to aged, blind or disabled persons. [In the administration of the Title IV-A and state supplementation programs, staff of the cabinet is required by various federal law and regulations and state law to obtain information from applicants and recipients of the programs under oath or affirmation.] KRS 205.170 empowers the Secretary for Human Resources or his duly authorized representative to administer oaths and affirmations to obtain information from an applicant or recipient in the administration of the AFDC and state supplementation programs. This administrative regulation sets forth the designation of certain employees by the secretary [of certain employees] of the cabinet to administer oaths and affirmations to an applicant or a recipient [applicants and recipients] of a money grant[s] in limited situations.

Section 1. Specific Worker Designation. The following classifications of employees shall be [Field services supervisors, field services managers and regional program managers of the Department for Social Insurance in the performance of their duties in the various counties of the Commonwealth are] designated as duly authorized representatives of the Secretary of the Cabinet for Human Resources to administer an oath or affirmation to an applicant or recipient:

(1) A field services supervisor;
(2) A field services manager; and
(3) A regional administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient [oaths and affirmations to recipients] for the purpose of obtaining his [their] sworn statement:

(1) Regarding a claim that a check issued from a [pursuant to the] money payments program[s] of the cabinet has been:
(a) Lost;
(b) Misplaced; or
(c) Stolen;
(2) To request a replacement check; or
(3) When a check endorsement is viewed.

Section 3. Process. (1) An affidavit shall be used when:
(a) A check is reported lost or stolen to request a replacement check; or
(b) When a check endorsement is viewed.
(2) If the payee reports nonreceipt, loss or theft of a check, the payee shall come into the office to complete an affidavit within four (4) work days. This process will place a stop payment on the check.
(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.
(a) The payee shall view the endorsement; and
(b) If the signature is not that of the payee, the payee shall sign the affidavit stating the signature on the photocopy is not his signature and he received no benefit from the cashing of the check.
(4) The affidavit shall also be used to request reissuance of the check in question.

Section 4. Material Incorporated by Reference. (1) Forms necessary for the administration of an oath or affirmation for the AFDC and state supplementation programs are being incorporated effective November, 1993. These forms include:
(a) PA-60, revised 10/91;
(b) PA-61, revised 5/88.
(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 27, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey
(1) Type and number of entities affected: This amendment is conforming with the drafting requirements of KRS Chapter 13A. There is no policy change.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgated administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(2)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 205.32

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. 45 CFR 205.32 mandates that states have procedures in place to assure lost or stolen benefit checks are replaced without undue delay.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:116. [~~Low-income~~] Home energy assistance program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq.

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq., [~~Title XXVI of the Omnibus Budget Reconciliation Act of 1981~~] as amended, [~~and Augustus F. Hawkins Human Services Reauthorization Act of 1990~~] to administer the Low Income Home Energy Assistance Program (LIHEAP) [~~a program~~] to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This administrative regulation states the eligibility and benefits criteria for heating [~~energy~~] assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) [~~(12)~~] "HEAP" means home energy assistance program and shall refer to the heating assistance portion of LIHEAP.

(8) [~~(7)~~] "Heating season" means the period from October through April.

(9) [~~(8)~~] "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and who share complete kitchen facilities for the exclusive use of the individual or individuals.

(10) [~~(9)~~] "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(11) [~~(10)~~] "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(12) [~~(11)~~] "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider.

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross income shall be at or below 110% of the federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services.

(b) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than $5,000.

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

(b) Be without heat; or

(c) Be without fuel within five (5) days; or

(d) Have received a notice of disconnection of service; or

(e) Require a heat system repair to obtain adequate heat; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for the six (6) primary heating fuels prior to the implementation of the subsidy component.

(c) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits. Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(d) Benefit matrix subsidy component.

Households Income as a Percent of 100% Federal Poverty Level	Benefit Amount as a Percent of Heating Season Energy Costs (October through April)
0- 22%	18.5%
23- 44%	16.5%
45- 66%	14.5%
67- 88%	12.5%
89-110%	10.5%

(2) Crisis component. Benefits to households shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets, or emergency shelter. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household shall receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuels determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation.

(d) A household needing a heat system repair shall be referred to the local weatherization program.

Section 5. Benefit Delivery Methods. (1)(a) Payment under the subsidy component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, direct cash payments shall not be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, emergency lodging, or restoration or continuation of service.

Section 6. Right to a Fair Hearing. Any individual who has been denied assistance or whose application has not been acted upon with reasonable promptness has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted within the time period the department designates in the annual LIHEAP state plan as submitted to the federal government. [~~beginning November 9, 1992 and ending by December 11, 1992.~~]

(b) Applications for the crisis component shall be accepted beginning on the date specified in the annual LIHEAP state plan [~~January 4, 1993~~] and ending by March 31, [~~1993,~~] or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) [~~Up to fifteen (15) percent of the federal LIHEAP allocation shall be reserved for weatherization assistance. These funds shall be used for regular weatherization services and for all heating system repairs identified during the subsidy and crisis components of HEAP.~~

~~(2)~~] An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(2) [~~(3)~~] The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's share of nonduplicated households assisted in the preceding year's crisis component.

(3) [~~(4)~~] Each agency shall reserve ten (10) percent of the allocation under subsection (2) [~~(3)~~] of this section to assure component availability until March 31, [~~1992~~] for emergency crisis assistance for households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

(4) No less than [~~(5) Up to~~] $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel during the crisis component shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;

(3) HEAP recipients shall be treated the same as households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: December 8, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or

written comments on the proposed administrative regulation to the contact person: William K. Moore, Deputy Counsel, Department of Law, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: The Home Energy Assistance Program (HEAP) will have 2 components: subsidy and crisis. Subsidy will provide heating assistance benefits up to 134,000 households, and crisis will provide heating assistance benefits up to 68,700 households experiencing a heating crisis. The 23 local community action agencies will operate the program.

(a) Direct and indirect costs or savings to those affected: In the subsidy component, all eligible households that apply will receive benefits to average $105 per household. To the extent that funds remain available, assistance will be provided to eligible households experiencing a crisis, and will be the minimum necessary to alleviate the crisis. Assistance may be fuel or other energy for heating, heaters, blankets, or emergency shelters. The average crisis benefit per household is estimated at $84. Administrative funds will be made available to reimburse the community action agencies for allowable administrative costs.

1. First year: A total of up to $19,882,345 shall be available for heating assistance benefits. Up to $14,100,000 shall be allocated for subsidy and the balance, including all unexpended funds from subsidy will be allocated to the crisis component. Up to $1.954 million shall be available to reimburse administrative costs.

2. Continuing costs or savings: Funds for HEAP are based upon the estimated federal appropriation level. There will not be any continuing costs or savings under this amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP.

(a) Direct and indirect costs or savings: Up to 10% of available funds for HEAP, including Energy Assistance Trust Funds appropriated for heating assistance by the General Assembly, may be used for administration.

1. First year:

2. Continuing costs or savings: There will not be any continuing costs or savings.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(3) Assessment of anticipated effect on state and local revenues: The HEAP shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditures for the state fiscal year 1994 Energy Assistance Trust Fund appropriation ($5.346 million) will reduce the amount of funds invested in the trust fund and reduce the amount of interest revenues earned by the trust fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended to reflect the plan for heating assistance contained in the Low Income Home Energy Assistance Block Grant which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse Program. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funds for the 2 components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the state plan. The public review and comment supported the funding levels.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping, or a duplication.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: These regulations affect the HEAP program only. Therefore, the reference to weatherization assistance in Section 9 is removed and will be included in a separate regulation for the weatherization assistance program.

Tiering. Was tiering applied No. Federal statutes mandate that eligibility requirements be in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, Omnibus Budget Reconciliation Act of 1981, as amended and Augustus F. Hawkins Human Services Reauthorization Act of 1990.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. The statute requires that local agencies administering similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or related to other factors affecting the availability of residential energy.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, it is necessary to target assistance to those households most in need.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect cities which own and operate utilities for heating.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:030. Application process.

RELATES TO: KRS 194.050, 7 CFR 273.2, 273.10

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program as prescribed under 7 USC 2011-2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. [~~This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.~~]

Section 1. Right to apply or Reapply. An individual shall have the right to apply or reapply for food stamp benefits. The cabinet shall make the application process readily accessible to households.

Section 2. Application Process. An application shall be considered to have been filed when:

(1) An application form is completed and signed;

(2) The applicant or representative is interviewed;

(3) Required information on the application is verified; and

(4) The application is received by the appropriate office.

Section 3. Who May Sign an Application. An application for food stamps shall be signed by:

(1) A responsible member of the household; or

(2) The household's authorized representative.

Section 4. Where Applications are Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in the office of the Department for Social Insurance in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 5. Prompt Action on Applications. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible but not later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 6. Expedited Service. A household eligible for expedited services shall be:

(1) A household in which:

(a) Monthly gross income is less than $150; and

(b) Liquid resources do not exceed $100; or

(2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed $100; or

(3) A household containing homeless individuals; or

(4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 7. Public Assistance Application Process.

(1) A household in which all members are applying for Aid to Families with Dependent Children (AFDC) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 5 of this administrative regulation shall apply to public assistance applications.

(3) A household in which all members receive, or are authorized to receive, AFDC or Supplemental Security Income (SSI) shall be considered categorically eligible unless the entire household is:

(a) Institutionalized; or

(b) Disqualified from receiving food stamps.

(4) Categorically eligible households shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income limits;

(c) Social Security number information;

(d) Sponsored alien information; and

(e) Residency.

Section 8. Joint SSI and FS Application Process. (1) A household in which all members are applicants or recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 9. Material Incorporated by Reference. (1) Forms necessary for the application process in the Food Stamp Program are incorporated by reference. These forms include the KFS-77, revised 7/93 [~~6/91~~], the KFS-100, revised 12/93 [~~6/91~~], the KFS-100 Supplement A, revised 6/91, the KFS-100 Supplement B, revised 10/93 [~~6/91~~], the KFS-100 Supplement C, revised 12/93 [~~6/91~~], the KFS-100 Supplement D, revised 7/92 [~~6/91~~], the KFS-100 Supplement E, revised 6/91, the KFS-100 Supplement F, revised 6/91, the KFS-100 Supplement G, revised 6/91, and the KFS-100 Supplement H, revised 4/91.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportu-

nity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: None. The changes to the material incorporated by reference are reflective of current food stamp policy and information contained on the current on-line food stamp application.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendments to the material incorporated by reference are reflective of current policy as mandated by the 7 USC 2011 through 2030, as amended. The material incorporated by reference is amended to reflect the current on-line systems food stamp application.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with the 7 USC 2011 through 2030, as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation
(Proposed Amendment)

908 KAR 2:010. Local board authority.

RELATES TO: KRS 210.440, 210.450

STATUTORY AUTHORITY: KRS 210.450

NECESSITY AND FUNCTION: KRS 210.440 and 210.450 authorize the Cabinet for Human Resources to establish regional mental health/mental retardation boards to act as the authority for planning and administration of grants for all local programs relating to mental health, mental retardation, alcohol and drugs. [~~The purpose of~~] This administrative regulation is to provide for recognition of regional mental health/mental retardation boards as the local authority for implementing [~~carrying out~~] delegated responsibilities and to insure compliance with applicable policies issued by the Cabinet for Human Resources.

Section 1. Grants. All grants for local programs in mental health, [~~and~~] mental retardation or substance abuse implemented [~~carried on~~] under the auspices of the Cabinet for Human Resources shall be directed to agencies recognized as [~~those~~] regional mental health/mental retardation boards [~~recognized as such~~] by the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services. For purposes of implementing [~~carrying on~~] the delegated regional responsibilities of the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, the [~~these~~] regional mental health/mental retardation boards shall become the local authority. Recognition as local authority shall [~~such will~~] be renewed annually provided the board is in compliance with applicable federal and state [~~current~~] laws, and administrative [~~rules,~~] regulations [~~and policies~~] relating to mental health/mental retardation boards.

Section 2. Policies. All regional mental health/mental retardation boards shall comply with the policies issued by the cabinet to insure compliance with applicable federal and state laws and regulations. [~~Such~~] Policies shall include [~~but shall not be limited to~~] planning, budgeting, reporting, operating procedures and other administrative functions.

RICE C. LEACH, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 24, 1993

FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jeanne Southworth

(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the cabinet to provide mental health, mental retardation, and substance abuse services.

(a) Direct and indirect costs or savings to those affected: There

is no direct or indirect costs or savings to the community MH/MR boards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: This administrative regulation does not involve paperwork or reporting requirements.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because this administrative regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation
(Proposed Amendment)

908 KAR 2:020. Personnel rules of local board.

RELATES TO: KRS 210.120, 210.370, 210.450

STATUTORY AUTHORITY: KRS 210.450

NECESSITY AND FUNCTION: KRS 210.450 authorizes the Cabinet for Human Resources to set the standards and administrative regulations for the community mental health/mental retardation center personnel files.

Section 1. Personnel Files. A personnel file shall be established [~~initiated~~] and maintained by [~~at~~] the center for each employee of the district board. The minimum contents of a personnel file shall be:

(1) Application for employment completed by the employee. A center may design its own form or may use the state personnel application form [~~which will be~~] supplied upon request.

(2) Professional credentials [~~to~~] reflecting training and experience adequate for position qualification [~~for the position to which the employee is employed~~]. If an employee is [~~employed~~] in a position which requires a license, registration or certificate, a current copy [~~of such~~] shall be included.

(3) Advice of appointment or the [~~such~~] suitable document or memorandum from the appropriate center official appointing the [~~said~~] applicant to the position. The [~~This~~] document shall contain conditions or terms of employment with signatures of the employer and employee [~~accepting said conditions~~].

(4) All forms used for participation in Kentucky's Employees' Retirement System or other retirement system.

(5) Personnel action report form to reflect any change in the status of the employee (salary change, transfer, promotion, leave, leave without pay, reclassification, change in position title, etc.).

(6) Personnel action form reflecting termination of employment, e.g., resignation, dismissal, etc., shall appear in each terminated personnel file.

(7) The employee position description shall include:

(a) The title of the position;

(b) The duties of the position;

(c) Requirements of training and experience necessary to qualify for the position; and

(d) A brief description of additional skills or special knowledge desirable which the applicant should possess.

(8) These documents shall be subject to state and federal examination [~~audit~~].

Section 2. Personnel Policies. Each district board shall [~~initiate and~~] maintain a set of personnel policies for the governance of all center staff [~~members~~]. A copy of these [~~such~~] policies shall be filed with the Cabinet for Human Resources together with [~~subsequent~~] revisions as they occur. [~~Such~~] Personnel policies shall indicate compliance with appropriate federal and state laws and regulations and shall include[~~, but not be limited to,~~] the following areas of personnel administration:

(1) Leave policies;

(2) Salary policy; wage and price administration;

(3) Conditions of termination;

(4) Outside [~~employment; outside~~] practice for professionals;

(5) Staff development and continuing education provisions;

(6) Fringe benefits;

(7) Reimbursable expenses;

(8) Employee grievance procedures;

(9) Employee performance evaluations; and

(10) Method of salary increments.

Section 3. Additional Statements. [~~(1) Applicants for center positions already working for the Cabinet for Human Resources may not accept additional employment without the express written consent of the Secretary of the Cabinet for Human Resources. This permission must be secured by the applicant (employee) in writing.~~]

(1) [~~(2)~~] Copies of state statutes relevant to mental health-mental retardation boards may be obtained from the Secretary of the Cabinet for Human Resources and kept on file by the mental health-mental retardation board.

(2) [~~(3)~~] Copies of administrative regulations promulgated by the secretary under provisions of the above statutes shall be obtained from the Secretary of the Cabinet for Human Resources and kept on file by the mental health-mental retardation board.

(3) [~~(4)~~] Time and attendance [~~records. Adequate~~] records shall be maintained by each center certifying days or hours worked and leave taken for [~~each and~~] all employees of the center. These records shall [~~will~~] be subject to state and federal audit.

(4) [~~(5)~~] An organizational chart [~~organization's chart(s) shall be filed~~] by each organization indicating administrative authority and clinical authority shall be on file.

(5) [~~(6)~~] Any employee shall be provided access to any reasonable document pertaining to the corporation or to his rights as an employee.

[~~(7) The center shall comply with all applicable current federal and state regulations pertaining thereto.~~]

Section 4. Classification and Compensation. (1) Each board shall prepare and maintain a classification plan [~~for all positions. The plan shall be~~] based on the duties and responsibilities assigned to each classification. The plan [~~and~~] shall include for each classification:

(a) An appropriate title;

(b) Description of duties and responsibilities;

(c) Required education and experience; and

(d) Other qualifications.

(2) Each board shall adopt a compensation plan that specifies [. The compensation plan shall provide for] salary ranges of [for the] various classifications [and each classification shall be assigned a salary range in the compensation plan commensurate with the duties and responsibilities of the classification within budgetary limitations]. All positions in each [specific] class[ification] shall be assigned the same salary range [in the compensation plan].

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 24, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jeanne Southworth

(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the department to provide mental health, mental retardation, and substance abuse services.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to the community MH/MR boards.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: This administrative regulation involves paperwork requirements in relation to MH/MR boards' personnel files.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because this administrative regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation
(Proposed Amendment)

908 KAR 2:030. Board structure and operation; eligibility for state grants.

RELATES TO: KRS 210.400, 210.410, 210.450
STATUTORY AUTHORITY: KRS 210.450

NECESSITY AND FUNCTION: KRS 210.450 authorizes [empowers] the Secretary of the Cabinet for Human Resources to promulgate administrative [rules and] regulations governing eligibility of community mental health boards to receive state funds. [Consistent with this authority,] This administrative regulation establishes the minimum eligibility requirements for receipt of state funds for community mental health/mental retardation programs.

Section 1. [Application by Recognized Mental Health/Mental Retardation Boards.] Definitions. [As used herein, unless the context otherwise requires, the term:]

(1) "Board of directors" or "board" means the group of persons vested with the management of the affairs of the corporation regardless [irrespective] of the name by which the group is designated except as provided in Section 8 of this administrative regulation.

(2) "Director" means a member of the "board of directors."

(3) "Articles of incorporation" means the original or restated articles of incorporation or [of] articles of consolidation and all amendments [thereto], including articles of merger.

(4) "Bylaws" means the [code or] codes or rules adopted for the regulation or management of the affairs of the corporation regardless [irrespective] of the [name or] names by which the [such] rules are designated.

Section 2. Requirements for Recognition. A nonprofit corporation requesting recognition from the Secretary of the Cabinet for Human Resources as a district mental health/mental retardation board for the purpose of obtaining state funds, shall annually submit to the secretary, not later than the first day of April of the year preceding the fiscal year for which applicant requests recognition, an [and] application approved by its board of directors, which contains documentation and agreements satisfying the following requirements:

(1) Articles of incorporation as a nonprofit corporation in compliance with Kentucky statutes;

(2) Written statement by the applicant that it shall provide those service prerequisites set forth in KRS 210.410, and that the [such] services shall be available to each of the geographic catchment areas, as established by the Cabinet for Human Resources plan, in which the board proposed to provide service;

(3) Written agreements to operate in accordance with the administrative regulations [of the Cabinet for Human Resources and regulations] and statutes [of the Commonwealth of Kentucky] affecting operations, and to comply with Title VI of the 1964 Federal Civil Rights Law; and

(4) Articles of Incorporation or corporate bylaws which meet the requirements of this administrative regulation as set forth in this subsection:

(a) A provision establishing the location of a principal office of business of the organization;

(b) A provision declaring the purposes of organization to include concern for mental illness, mental health, mental retardation, alcoholism, [and] drug abuse, or addiction, and the implementation [carrying out] of all functions set forth in KRS 210.400 [(]including that the board will act as administrator of the program[)]; and

(c) A provision setting forth the organization, duties and powers of the board of directors.

(5) In the interim period between annual requests for recognition from the Cabinet for Human Resources, the board shall submit, within

ten (10) days after adoption, any [~~and all~~] additions, deletions, and changes in their articles of incorporation or corporate bylaws;

(6) Following the election of any officer(s) of the board [~~and/~~]or selection of any new directors the board shall submit to the Secretary of the Cabinet for Human Resources within ten (10) days the names and addresses of the above, whenever it shall occur;

(7) If [~~In the event that~~] an applicant is not in conformity with these requirements, the applicant may be authorized to receive state funds for a probationary period upon assurance of the applicant that it shall [~~will~~] bring its operations, bylaws and Articles of Incorporation into compliance with the required standards. The duration of the [~~such~~] probationary period shall [~~will~~] be set by the Secretary of the Cabinet for Human Resources.

Section 3. Membership Criteria for the Board. (1) All nonprofit mental health/mental retardation boards shall be appointed in accordance with KRS 210.380 and applicable federal regulations.

(a) The provisions of paragraph (b) of this subsection notwithstanding, an individual board member may represent more than one (1) category provided, however, in no event shall he represent more than three (3) categories as specified in KRS 210.380 for the purpose of certifying board composition.

(b) A board shall be deemed representative of each of the categories, organizations or associations specified in KRS 210.380 provided there is on the board one (1) representative of each category.

(2) The board of a nonprofit corporation, serving as administrator and not established by a combination of either cities or counties shall number not less than fifteen (15) nor more than forty (40) members (except in the case of multiple catchment area boards). The members shall have demonstrated an interest in mental health, mental illness, mental retardation, developmental disabilities, alcoholism, [~~or~~] drug abuse or addiction. At least one-fourth (1/4) of the [~~such~~] members shall have indicated their primary interest as mental retardation or developmental disabilities.

(3) All directors shall reside within the geographic catchment areas; directors shall be [~~so~~] selected [~~as~~] to provide at least one (1) representative from each county encompassed.

(4) If an [~~When~~] applicant proposes to serve a district containing multiple catchment or grant areas, the membership requirement of the board of directors shall be as follows:

(a) Not less than fifteen (15) nor more than forty (40) members.

(b) All directors selected shall reside within and represent the respective geographic catchment areas.

(c) [~~and~~] The board of directors shall contain at least one (1) director from each county in each catchment area.

(5) One-fourth (1/4) of the membership of the board of directors shall be elected annually. A maximum of two (2) consecutive four (4) year terms may be served by any director.

(6) No member of the immediate family of a board member shall be employed in a service funded by the board. Immediate family shall be construed to include a spouse, sons, daughters, mother, father, brothers, sisters, and grandparents. This provision shall not apply retroactively to the effective date of this regulation, nor to any person [~~so~~] employed prior to the appointment of the board member[~~'s appointment~~].

Section 4. Conduct of the Board. The board of directors shall:

(1) [~~Schedule meetings of the board of directors. The board shall~~] Meet at least twelve (12) times per year except that the regional board of a multiple catchment area shall meet at least six (6) times per year;

(2) Specify in the minutes of the board an annual meeting date for election of officers [~~shall be specified in the minutes of the board~~];

(3) [~~(2)~~] Establish quorum requirements for meeting of the board of directors;

(4) [~~(3)~~] Establish restrictions on compensation of board members [~~of the board of directors~~] including the prohibition against any board member [~~of board~~] contracting with the board to perform personal services; and

(5) [~~(4)~~] Establish procedures for removal of directors who are excessively absent from board meetings.

(6) [~~(5)~~] Establish procedures for filling of vacancies at times other than annual meetings including the role of the nominating committee.

Section 5. Election and Functioning of Officers. The selection and functioning of officers of the applicant shall include the following:

(1) Designation of the officers of the applicant.

(2) Specifications of the duties and terms of officers.

(3) Specifications of the method by which officers shall be selected, including a requirement that all officers be elected from the membership of the board of directors.

(4) Designation of dates for the assumption of duties by officers.

(5) A restriction prohibiting any board member participating in any matter in which he has a potential conflict of interest or serving as chairman of more than one (1) of the standing committees.

Section 6. Standing Committees. The board shall establish the following standing committees (as a minimum), including a description of their functions and responsibilities, meeting schedules, and the procedures for designating their members:

(1) Executive committee: composed of at least twenty-five (25) percent of the membership of the board of directors and shall include all officers and chairmen of standing committees of the board.

(2) Finance committee: composed of at least the treasurer and three (3) other members of the board.

(3) Personnel committee: composed of at least twenty (20) percent of the membership of the board. When a board operates multiple catchment area programs, the personnel committee membership shall reflect as equal a representation of the catchment areas as is mathematically possible.

(4) Staff development and training committee: composed of not less than three (3) nor more than eleven (11) board members [~~of the board~~]. The committee shall assure implementation and development of individual and team in-service training in mental health, mental retardation, alcoholism and drug addiction-related disciplinary skills.

(5) At the discretion of the board, the personnel committee and the staff development and training committee may be combined into a single committee.

(6) Nominating committee: composed of not less than six (6) persons. The function and responsibility of this committee shall include ensuring public advertisement of the eligibility criteria and procedures for nomination for election to the board and the setting of time schedules for such public announcement. The committee shall present nominations for one-fourth (1/4) membership of the board (annually or biennially) and shall present nominations to fill vacancies as they occur. In addition to general nominating procedures and public advertising the nominating committee shall establish procedures providing for nominations by petition. Any person not placed in nomination by the committee but who is qualified, may have his name placed on the list of nominees by presenting a petition for nomination signed by twenty-five (25) registered voters of the region. Applicants shall be allowed sufficient time to prepare and execute [~~such~~] petitions prior to the date of the election and after initial public advertising has been placed. The board shall [~~must~~] vote on a petitioning nominee as well as on the slate placed nomination by the committee.

(7) Program planning and evaluation committee. In single catchment areas, the composition shall be at least four (4) board members [~~of the board~~]. In multiple catchment areas, the composition shall be the chairmen of the catchment area boards and at least four (4) other board members [~~of the board of directors~~]. The committee shall function as the overall committee concerned with the efficacy of the existing program and the future service needs of the regional

programs in mental health, mental retardation, alcoholism and drug abuse education and treatment, and the relationship of the regional program to the regional community.

Section 7. Special and Ad Hoc Committees. Intermittently [~~From time to time~~] the board may establish [~~such~~] special or ad hoc committees [~~as~~] it shall deem[s] advisable and shall specify the charge and function of the [~~such~~] committees.

Section 8. Catchment Area Boards. If [~~When~~] more than one (1) catchment area program shall [~~is to~~] be administered by a single board of directors, this board may provide for one (1) catchment area board for each geographic catchment area served. The catchment area board shall meet at least twelve (12) times per year. Upon provision for catchment area boards, the single board shall designate itself as the regional mental health/mental retardation board and shall appoint an equal number of its members to each separate catchment area board. No more than twenty-five (25) percent of regional board members appointed to a catchment area board may reside outside of the catchment area. Each catchment area board shall, otherwise, be representative of the individuals who reside in the catchment area, and at least fifty (50) percent of the catchment area board members shall not be providers of health care. The catchment area board shall be responsible for establishing general policies for the catchment area program, approving the budget and expenditure of funds and approving the selection of the center director. The regional mental health/mental retardation board shall be responsible for reviewing and approving the annual plan and budget prepared by a catchment area board and shall be responsible for all personnel policies, contractual obligations and insurance of the quality of direct patient services for the entire region. The catchment area board shall have [~~such~~] authority and responsibility as may be delegated to it by the board. The [~~Such~~] authority and responsibility may include[~~, but not necessarily be limited to,~~] the following:

(1) The general and specific functions and responsibilities of the catchment area board;

(2) The process by which a representative catchment area board shall [~~will~~] be selected and maintained;

(3) The process by which appropriate training shall [~~will~~] be made available to catchment area board members [~~so as~~] to enhance their effectiveness;

(4) The organizational and administrative relationships between the catchment area board and the center director, the professional advisory council and any superordinate governing structure;

(5) The procedures the catchment area board shall [~~will~~] utilize to review the center program, the quality of its services and the results of center evaluation data;

(6) The procedures the catchment area board shall [~~will~~] utilize in reporting and disseminating to the public information on the center's programs and services; and

(7) The procedures the catchment area board shall [~~will~~] utilize to ensure that the governing body shall [~~will~~] have adequate administrative support and capacity to carry out its functions.

Section 9. State and Federal Funding. The Cabinet for Human Resources may provide state and federal funding to mental health/mental retardation boards by contract.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 24, 1993

FILED WITH LRC: November 22, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jeanne Southworth

(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the cabinet to provide mental health, mental retardation, and substance abuse services.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to the community MH/MR boards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: This administrative regulation requires the MH/MR boards to submit appropriate documentation to achieve recognition to be eligible for funding.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because this administrative regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation
(Proposed Amendment)

908 KAR 2:050. Formula for allocation of funds.

RELATES TO: KRS 210.420, 210.440
STATUTORY AUTHORITY: KRS 210.420, 210.450

NECESSITY AND FUNCTION: KRS 210.440 requires the Secretary of the Cabinet for Human Resources to allocate funds to the mental health/mental retardation boards at the beginning of each fiscal year. KRS 210.420 requires the Secretary to prescribe, by administrative regulation, a formula for the allocation of these funds, including provisions for per capita allocations, incentive allocations which require local matching funds based on per capita wealth of the area served, and discretionary allocations to be available to the secretary to maintain essential services pursuant to KRS 210.410. This administrative regulation prescribes the formula for allocation of

these [~~such~~] funds.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

(2) "Local tax match" means revenue raised locally by a mental health/mental retardation board from:

(a) A mental health/mental retardation tax (KRS 210.460, 210.470, 210.480); and

(b) A county fiscal court appropriation or an appropriation by a city legislative body, including in-kind contributions at fair market value.

(3) "Other local match" means revenue raised locally by a mental health/mental retardation board, but shall be limited to:

(a) In-kind contributions other than those from a county fiscal court or city legislative body;

(b) Cash donations and contributions;

(c) Sales of workshop products;

(d) Interest income;

(e) Rental income; and

(f) Funds provided by affiliates derived from the sources specified in this subsection, limited to the extent that the funds shall be used to finance programs endorsed by the board in its annual plan and budget.

(4) "Per capita wealth" means the current total assessed value of property, as adjusted and recorded by the Kentucky Revenue Cabinet, divided by the population of a given area.

(5) "Region" means that geographic locality determined by incorporation for the purpose of delivery of comprehensive mental health/mental retardation services under KRS 210.370 as controlled by a board of directors.

Section 2. Population. (1) Population figures used by the secretary to determine the formula allocations shall come from the U.S. Department of Commerce, Bureau of the Census, as reported in the most recent edition of [~~by~~] the Urban Studies Center, University of Louisville, Population Research Unit [~~7,~~] Report [~~7, January, 1982. The estimates available from the most recent edition of this publication will be used for formula allocations in future years~~].

(2) Any geographic breakdown in population shall be [~~is~~] in accordance with KRS 210.370.

[~~Section 2. Definitions. (1) "Cabinet" means Cabinet for Human Resources.~~

~~(2) "Local tax match" includes revenue raised locally by a mental health/mental retardation board from:~~

~~(a) A mental health/mental retardation tax (KRS 210.460, 210.470, 210.480);~~

~~(b) A county fiscal court appropriation and/or an appropriation by a city legislative body, including in-kind contributions at fair market value.~~

~~(3) "Other local match" includes revenue raised locally by a mental health/mental retardation board, but is limited to:~~

~~(a) In-kind contributions other than those from a county fiscal court or city legislative body;~~

~~(b) Cash donations and contributions;~~

~~(c) Sales of workshop products;~~

~~(d) Interest income;~~

~~(e) Rental income; and~~

~~(f) Funds provided by affiliates derived from the sources specified in this subsection, but only to the extent that such funds are used to finance programs endorsed by the board in its annual plan and budget.~~

~~(4) "Per capita wealth" means the current total assessed value of property, as adjusted and recorded by the Kentucky Revenue Cabinet, divided by the population of a given area.~~

~~(5) "Region" means that geographic locality determined by incorporation thereof for the purpose of delivery of comprehensive mental health/mental retardation services under KRS 210.370 as controlled by a board of directors.~~]

Section 3. Formula for Allocation of State Appropriated Funds. The formula for allocation of state appropriated funds shall be as follows:

(1) Per capita allocations. Of the total general funds appropriated by the General Assembly for a fiscal year for the community mental health/mental retardation services programs, fifteen (15) percent [~~thereof~~] shall be distributed based on per capita allocations. The sum available to each region shall be determined by dividing the total funds available in the per capita allocation by the total population of the Commonwealth, multiplied by the population of each region; provided, however, that the payment of the [~~such~~] sum shall be on a cost related fee for service basis following receipt of appropriate and timely billings submitted by each [~~respective~~] board.

(2) Discretionary allocations. The discretionary allocations available to the secretary to maintain essential services pursuant to KRS 210.410 shall be equal to ten (10) percent of the general funds appropriated by the General Assembly for a fiscal year for community mental health/mental retardation programs.

(3) Cost-related fee for service allocations. Of the total general funds appropriated by the General Assembly for a fiscal year for the community mental health/mental retardation services program sixty (60) percent [~~thereof~~] shall be allocated based on service units reported in the board's annual plan and budget as approved by the secretary including approved amendments [~~thereto~~]; provided, however, [~~that~~] payment shall be on a cost-related fee for service basis following receipt of appropriate and timely billings submitted by the board. If [~~In the event~~] any board fails to report sufficient service units to access its cost-related fee for service allocation, these [~~such~~] funds shall be reallocated on a cost-related fee for service basis to those regions whose reported service units exceed their allocation.

(4) Incentive allocations.

(a) Of the total general funds appropriated for community mental health/mental retardation programs, fifteen (15) percent [~~thereof~~] shall be allocated to the regions based on local tax match and other local match weighted to reflect the per capita wealth of the region. Local tax match and other local match shall be based upon the preceding fiscal year's local collections as determined by the independent auditor of each board and certified by the cabinet.

(b) The cabinet shall adjust the local tax match revenue and other local match revenue by applying a per capita wealth adjustment factor. The adjustment factor shall be computed by dividing the per capita wealth of the state by the per capita wealth of a region.

(c) The matching rates shall be thirty-five (35) cents for each dollar of local tax match after per capita adjustment and fifteen (15) cents for each dollar of other local funds after per capita wealth adjustment. The preceding totals shall equal the total state funds earned by each board under the incentive allocation provided there are sufficient funds appropriated and allocated to the incentive allocation.

(d) An initial incentive ceiling shall be calculated for each board by dividing the local incentive funds available (fifteen (15) percent of the total general funds appropriated) by the population of the state, multiplied by the population of each region. If [~~In the event~~] one (1) or more boards fails to report sufficient local tax match and other local match funds to attain their ceiling, the amount they are under the ceiling shall be returned to [~~placed back into~~] the incentive allocation for reallocation to regions that exceeded their ceiling. If through this method all incentive funds cannot be allocated, the remaining funds shall be placed in the cost-related fee for service fund to be allocated on a cost-related fee for service basis.

(e) Incentive funds shall be adjusted following the receipt of actual collections for the previous fiscal year. The report of actual collections shall be submitted by the independent auditor in conjunction with each annual audit report of each [~~respective~~] board.

RICE C. LEACH, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 24, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jeanne Southworth
(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the cabinet to provide mental health, mental retardation, and substance abuse services.
(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to the community MH/MR boards.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (Note any effects upon competition):
(b) Reporting and paperwork requirements: This does not involve reporting or paperwork requirements.
(2) Effects on the promulgated administrative body:
(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because this administrative regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation
(Proposed Amendment)

908 KAR 2:060. Mental health and mental retardation manuals for funding [~~plan and budget~~] instructions, program policies and standards, billing instructions, reporting requirements, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460

STATUTORY AUTHORITY: KRS 210.440 to 210.450
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Request for Funding Instructions Manual. [~~Annual Plan and Budget Instructions.~~] The Cabinet for Human Resources incorporates the Request for Funding Instructions Manual, November 1, 1993, [~~"Annual Plan and Budget Instructions, July 1, 1984"~~] by reference. community mental health and mental retardation boards shall follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes the following: rate and allocation schedules, program plan, [~~sheets, client service definitions and descriptions,~~] fiscal plan, waiver request, letter of assurance, and addenda[~~, and regional data packet~~]. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 2. Program Policies and Standards. [~~DMH/MRS, Program, Policies and Billing Instructions~~] Manual. The Cabinet for Human Resources incorporates the November 1, 1993 [~~July 1, 1985~~] edition of the Program Policies and Standards [~~"DMH/MRS Program Policies and Billing Instructions~~] Manual[~~,"~~] by reference. The manual relates to general operating standards and particular service standards for services funded by the department. [~~the following: billing and reimbursement instructions for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and contract amendment procedures.~~] The standards [~~instructions~~] contained shall be followed by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 3. Cabinet for Human Resources Community Mental Health and Mental Retardation Reimbursement Manual, July 1, 1993. The Cabinet for Human Resources incorporates this manual by reference. This manual relates to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 4. Billing Instructions Manual. The Cabinet for Human Resources,incorporates the Billing Instructions Manual, November 1, 1993, by reference. This manual relates to procedures for submission of payment requests to the department for defined services and special projects. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 5. Reporting Manual. The Cabinet for Human Resources incorporates the Reporting Manual, November 1, 1993, by reference. This manual relates to reporting requirements on clients, services, and outcomes. A copy of the manual is on file for inspection in the

Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

RICE C. LEACH, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 1, 1993
FILED WITH LRC: November 22, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rice C. Leach
(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the department to provide mental health, mental retardation, and substance abuse services.
(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to the community MH/MR boards.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (Note any effects upon competition):
(b) Reporting and paperwork requirements: This administrative regulation includes reporting and paperwork requirements of the community MH/MR boards in the submission of annual plans and budgets submission of billings, and outcomes of services provided.
(2) Effects on the promulgated administrative body:
(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because this administrative regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:100. Policies and procedures of Eastern State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and administrative regulations which insure proper administration and enforcement of these chapters. These polices and procedures describe the treatment and care of patients at Eastern State Hospital.

Section 1. Policies and procedures of Eastern State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated December 15, 1993 [~~November 15, 1991~~]; Volume II, Activity Therapy Services Policies and Procedures, dated November 15, 1991; Volume III, Admission Office Policies and Procedures, dated April 15, 1989; Volume IV, Community Relations Policies and Procedures, dated April 15, 1989; Volume V, Dental Policies and Procedures, dated April 15, 1989; Volume VI, Medical Department Policies and Procedures, dated April 15, 1989; Volume VII, Medical Records Policies and Procedures, dated April 15, 1989; Volume VIII, Medical Services Policies and Procedures, dated April 15, 1989; Volume IX, Pharmacy Policies and Procedures, dated April 15, 1989; Volume X, Psychology Services Policies and Procedures, dated April 15, 1989; Volume XI, Hospital Security Policies and Procedures, dated April 15, 1989; and Volume XII, Social Work Policies and Procedures, dated April 15, 1989 are incorporated by reference.

Section 2. These policies and procedures are available for inspection and copy at the office of the Commissioner for Mental Health/Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane, [~~275 East Main Street,~~] Frankfort, Kentucky 40601 [~~40621~~], and at the Facility Director's Office, Eastern State Hospital, 627 West Fourth Street, Lexington, Kentucky 40508.

RICE C. LEACH, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 17, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994 at 9 a.m., in the Health Services Auditorium, located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Jeanne E. Southworth
(1) Type and number of entities affected: The group of persons affected are the admissions to Eastern State Hospital each year and their families.
(a) Direct and indirect costs or savings to those affected: These regulations concern treatment and do not directly involve costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any

effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: These regulations concern treatment and do not directly involve costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because this regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 440 through 489; 42 USC Section 1396a(w), 1395cc(f).

2. State compliance standards. These policies and procedures regulate the operation of Eastern State Hospital.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains standards relating to the operation of hospitals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 3:110. Policies and procedures of Central State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489

NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded person, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and administrative regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Central State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated December 15, 1993 [~~November 15, 1991~~], and Volume II, Treatment Program, dated January 15, 1993, are incorporated by reference.

Section 2. These policies and procedures are available for inspection or copy at the office of the Commissioner for the Department for Mental Health/Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane [~~275 East Main Street~~], Frankfort, Kentucky 40601 [~~40621~~], and in the office of the Director at Central State Hospital, 10510 LaGrange Road, Louisville, Kentucky 40223.

RICE C. LEACH, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 17, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994 at 9 a.m., in the Health Services Auditorium, located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Jeanne E. Southworth

(1) Type and number of entities affected: The group of persons affected are the 1800 admissions to Central State Hospital each year and their families.

(a) Direct and indirect costs or savings to those affected: These regulations concern treatment and do not directly involve costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: These regulations concern treatment and do not directly involve costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because this regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 440 through 489; 42 USC Section 1396a(w), 1395cc(f).

2. State compliance standards. These policies and procedures

regulate the operation of Central State Hospital.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains standards relating to the operation of hospitals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 3:120. Policies and procedures of Western State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489

NECESSITY AND FUNCTION: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and administrative regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Western State Hospital as set forth in Volume I, General Hospital Policies and Procedures, dated December 15, 1993 [~~November 15, 1991~~]; Volume II, Recreational Therapy Services, dated August 15, 1988; Volume III, Occupational Therapy Services, dated August 15, 1988; Volume IV, Social Work Services, dated September 15, 1988; Volume V, Medical Records, dated August 15, 1988; Volume VI, Infection Control, dated August 15, 1988; Volume VII, Nursing Services, dated August 15, 1988; Volume VIII, Patient Advocate, dated August 15, 1988; Volume IX, Chaplaincy Services, dated August 15, 1988; Volume X, Employee Health Program, dated August 15, 1988; Volume XI, Administrative Services, dated September 15, 1988; Volume XII, Pharmacy, dated August 15, 1988; Volume XIII, Miscellaneous, dated August 15, 1988, relating to the operation of Western State Hospital are incorporated by reference.

Section 2. These policies and procedures are available for inspection and copy at the office of the Commissioner for the Department for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane [~~275 East Main Street~~], Frankfort, Kentucky 40601 [~~40621~~], and in the office of the Director, Western State Hospital, P.O. Box 2200, Hopkinsville, Kentucky 42240.

RICE C. LEACH, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 17, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994 at 9 a.m., in the Health Services Auditorium, located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Jeanne E. Southworth

(1) Type and number of entities affected: The group of persons affected are the admissions to Western State Hospital each year and their families.

(a) Direct and indirect costs or savings to those affected: These regulations concern treatment and do not directly involve costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: These regulations concern treatment and do not directly involve costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because this regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 440 through 489; 42 USC Section 1396a(w), 1395cc(f).

2. State compliance standards. These policies and procedures regulate the operation of Western State Hospital.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains standards relating to the operation of hospitals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, DECEMBER 15, 1993

KENTUCKY LEGISLATIVE ETHICS COMMISSION

2 KAR 2:020. Statement of financial disclosure.

RELATES TO: KRS 6.781 to 6.797
STATUTORY AUTHORITY: KRS 6.666(5), (6)
NECESSITY AND FUNCTION: KRS 6.781 requires all members of the General Assembly, all candidates and nominees for election to the General Assembly, and major management personnel in the Legislative Branch of state government to file Statements of Financial Disclosure. This administrative regulation establishes the required form.

Section 1. The Statement of Financial Disclosure required by KRS 6.781 shall be mailed to the Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, Kentucky 40601.

Section 2. (1) The "Statement of Financial Disclosure" is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE GEORGE E. BARKER, Chair
APPROVED BY AGENCY: November 22, 1993
FILED WITH LRC: December 6, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Legislative Ethics Commission Office in Room 318, Capitol Annex, Frankfort, Kentucky 40601, 10 a.m on January 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Michael O'Connor, Attorney, Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Michael O'Connor
(1) Type and number of entities affected: The Statement of Financial Disclosure will affect all members of the General Assembly, all candidates and nominees for election to the General Assembly, and all major management personnel in the legislative branch of state government. The exact number cannot be determined in advance.
(a) Direct and indirect costs or savings to those affected:
1. First year: This regulation will not add any direct or indirect costs or savings to those affected.
2. Continuing costs or savings: This regulation will not add any direct or indirect costs or savings to those affected.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional factors which will increase or decrease costs.
(b) Reporting and paperwork requirements: KRS 6.793 requires that the listed individuals file a Statement of Financial Disclosure with the Kentucky Legislative Ethics Commission not later than February 15 of each year, complete through December 31 of the preceding year. This regulation creates the required form.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs to the Kentucky Legislative Ethics Commission will be approximately one cent per page for printing costs. The original printing of 1,000 pages will cost $10. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.
2. Continued costs or savings: The costs should be consistent on an annual basis.
3. Additional factors increasing or decreasing costs: None known.
(b) Reporting and paperwork requirements: KRS 6.791 requires the commission to make the completed forms available for public inspection, and to retain the forms for five years after filing. This regulation adds no additional requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation will not have any effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The forms are required by the statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: No conflict determined.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict determined.
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all members of the General Assembly, candidates and nominees for election to the General Assembly, and major management personnel in the legislative branch of state government.

KENTUCKY LEGISLATIVE ETHICS COMMISSION

2 KAR 2:030. Rules of procedure.

RELATES TO: KRS Chapter 6
STATUTORY AUTHORITY: KRS 6.666(5)
NECESSITY AND FUNCTION: KRS 6.691 requires the Kentucky Legislative Ethics Commission to conduct adjudicatory proceedings in appropriate cases. The function of this administrative regulation is to regulate the proceedings of the commission.

Section 1. Definitions. (1) "Chairman" means Chairman of the Kentucky Legislative Ethics Commission.
(2) "Commission" means the Kentucky Legislative Ethics Commission.
(3) "Formal complaint" means a formal written statement accusing one (1) or more persons of a violation of the provisions of KRS Chapter 6.
(4) "Respondent" means a person accused of violating KRS Chapter 6.

Section 2. Purpose and Policy. These rules shall govern the proceedings of the commission and its subcommittees when applicable.

Section 3. Right of a Respondent to Request an Adjudicatory Hearing. If, after an investigation, the commission determines that probable cause exists to support an alleged violation of KRS Chapter

6 and, due to mitigating circumstances set forth in KRS 6.686(5)(a), the commission issues a confidential reprimand, the respondent may file a written request, within five (5) days of receipt of the reprimand, requesting a public adjudicatory proceeding. No respondent shall file an appeal based on a confidential reprimand without having first filed a timely request for an adjudicatory proceeding.

Section 4. Formal Complaints. (1) If the commission determines that probable cause exists to support an alleged violation of KRS Chapter 6, and further decides that a confidential reprimand as defined by KRS 6.686(5)(a) is not appropriate, a formal complaint shall be issued against the respondent. All such votes shall be secret.

(2) The formal complaint shall be prepared in writing, stating the facts alleged to constitute a violation of KRS Chapter 6, and containing a general statement of the applicable law. The formal complaint shall be signed by the chairman or such other member as the commission may authorize.

(3) Any number of acts or omissions, and any number of separate and distinct transactions alleged to constitute a violation of KRS Chapter 6 may be alleged in a single formal complaint, but each act or omission shall be set out in a separate paragraph.

(4) Separate complaints may be consolidated and heard as a single case.

(5) A formal complaint may be filed against two (2) or more persons if based upon the same or related sets of facts, and may, at the commission's discretion, be consolidated and heard as a single proceeding.

(6) When two (2) or more persons are proceeded against in the same proceeding, the commission shall make a separate finding regarding each respondent.

Section 5. Notice of Filing of Formal Complaint: Time to Answer. Upon the filing of a formal complaint, the administrative secretary, by certified mail with return receipt requested shall furnish the respondent with a copy of the formal complaint and notify the respondent that within twenty (20) days after the receipt of the notice, he must file his answer with the administrative secretary and serve a copy of his answer on the attorney for the commission by mailing or delivering a copy to him.

Section 6. When a Formal Complaint Can be Taken as Confessed. The commission may take the allegations of the formal complaint as admitted or confessed if a respondent who was notified of the formal complaint by the commission files an answer admitting the allegations or fails to file an answer within the time provided in these rules. The commission may receive such evidence as it deems of assistance in making its determination.

Section 7. Proceedings When Pleadings Present Only an Issue of Law. If the pleadings present only an issue of law, the commission shall fix a time for filing of briefs. The commission shall have the right to receive evidentiary material if it deems such may be of assistance.

Section 8. Pleadings and Preliminary Motions. (1) There shall be a formal complaint and answer and, when permitted by the chairman, such amendments to the pleadings as may be required to serve the ends of justice. No preliminary motions may be filed except for a more definite statement of the formal complaint or answer.

(2) The chairman shall rule on all motions, unless another commission member is authorized by the commission.

(3) All pleadings shall be filed with the administrative secretary and copies served upon opposing parties or their counsel as provided by the Kentucky Rules of Civil Procedure.

Section 9. Discovery. Either party may at any time after the issuance of a formal complaint move the chairman to order that discovery from the other party be allowed by any of the following methods:

(1) Oral deposition, provided however, that any party may request an order that the deposition be entered into the record in lieu of further testimony by the witness; and

(2) Requests for production of names of witnesses, documents, and other demonstrative evidence; and

(3) Requests for a brief synopsis of the testimony expected to be given by any expert witness.

The chairman may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

Section 10. Exchange of Witness Lists. At least seven (7) days before the date set for a hearing the attorneys for all parties, and for the commission, shall provide the names of all proposed witnesses to the commission. Copies of the witness lists shall be served upon opposing parties or their counsel as provided by the Kentucky Rules of Civil Procedure and additional witnesses may only be called for rebuttal, or with the permission of the commission for good cause shown.

Section 11. Prehearing Conference. The chairman may order that a prehearing conference be held with reasonable notice to all parties.

Section 12. Amendments to Formal Complaint or Answer. The formal complaint may be amended to conform to the proof or to set forth additional facts, either occurring before or after the commencement of the hearing. If such an amendment is made, the respondent shall be given reasonable time to answer the amendment and to prepare and present his defense against the matters charged thereby.

Section 13. Hearing Additional Evidence. The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the respondent at least ten (10) days prior to the date of the hearing.

Section 14. Transcript of Evidence. The proceedings before the commission shall be reported by a reporter appointed by the commission, or recorded by a mechanical device. If after a hearing the commission is of the opinion that the charge or charges should be dismissed, or that the respondent should only be administered a reprimand, the commission may direct the reporter to preserve all notes of the hearing, but defer a transcription of the record until ordered by the commission to prepare such a transcript. In all other proceedings the testimony shall be transcribed.

JUDGE GEORGE E. BARKER, Chair

APPROVED BY AGENCY: December 6, 1993

FILED WITH LRC: December 6, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing will be held at the Legislative Ethics Commission Office in Room 318, Capitol Annex, Frankfort, Kentucky 40601, 10 a.m on January 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Michael O'Connor, Attorney, Kentucky Legislative Ethics Commission, Room 318, Capitol Annex, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Michael O'Connor

(1) Type and number of entities affected: 2 KAR 2:030 will affect all respondents, witnesses, and attorneys who appear before the Kentucky Legislative Ethics Commission.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The regulation sets out the hearing procedures.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continued costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering is not applicable as this regulation applies equally to all respondents, witnesses, and attorneys in the same ways.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:200. Allowable campaign expenditures.

RELATES TO: KRS 121.150

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.175

NECESSITY AND FUNCTION: KRS 121.175, as amended by the General Assembly in extraordinary session in 1993, requires the Registry of Election Finance to promulgate administrative regulations to specifically define those expenditures that may lawfully be made from a candidate's campaign account. It is therefore necessary to promulgate this administrative regulation so that the agency may fulfill its statutory mandate.

Section 1. Allowable Expenditures. In addition to the general categories of allowable campaign expenditures provided by law, the following expenditures shall be considered allowable:

(1) Expenditures made or items donated to charitable and civic organizations such as clubs, neighborhood organizations, schools, and churches, provided that the expenditure furthers a candidacy through advertising;

(2) Expenditures for items of personal property bearing the name or likeness of the candidate in a conspicuous manner for distribution by a candidate which have a value of ten (10) dollars or less, and which are distributed for the purpose of advertising that individual's candidacy. These items include, but are not limited to, hats, shirts, calendars, magnets, holiday greeting cards, and similar items. The purchase of tickets for general distribution for the purpose of influencing and election, either directly or indirectly, shall not be allowed under the subsection;

(3) Reasonable expenditures for services such as distribution of campaign literature, staff services, and similar services which are primarily and directly related to the individual's candidacy;

(4) Expenditures for the purchase of transportation services, including but not limited to the transportation of voters to the polls, provided that the expenditures are reasonable in light of the number of persons transported, mileage driven, and time spent. All transportation expenditures shall be primarily and directly related to the candidacy of the individual on whose behalf the expenditures are made;

(5) Expenditures for tickets to political and other events to be attended by the candidate, his spouse, or a campaign staff representative, and from which the candidate derives a direct benefit to his candidacy. The burden shall be on the candidate to prove to the registry that representation at the event provided a direct benefit to his candidacy;

(6) The purchase of American, state, or other flags which are donated to schools, civic, or charitable organizations;

(7) Campaign events such as bean suppers, breakfasts, luncheons, or similar events, regardless of whether admission is charged, provided that the value of the meal does not exceed five (5) dollars per person; and

(8) The purchase or rental of items such as cellular telephones, copiers, computers, automobiles, facsimile machines, and similar items. Such purchase or rental shall be presumed to be primarily and directly related to the individual's candidacy if the purchase or rental occurs during the year in which the individual will appear on the ballot or seeks election as a write-in candidate. The purchase of such items in a year in which the individual is not a candidate shall be allowed only if the item is purchased solely for use in an upcoming campaign. The continued rental of such items during a year in which an individual is not a candidate shall be allowed, provided that the prorated use thereof which is primarily campaign related exceeds fifty (50) percent of the total use. Only that use attributable to the campaign may be paid for with campaign funds and the burden shall be on the candidate to prove that an expenditure is allowable under this subsection.

Section 2. Unlawful Campaign Expenditures. In addition to the expenditures specifically prohibited by law, the following categories of campaign expenditures shall not be considered allowable expenditures from a campaign account:

(1) Payment of dues to professional, civic, or other organizations to which the individual belongs or desires to join;

(2) Expenditures made to defray the costs associated with an individual's performance of his official duties as an officeholder; and

(3) Costs associated with gifts, flowers, food, or similar items which are purchased for the benefit of campaign staff or volunteers, or any other expenditure which bestows a private, pecuniary benefit to an individual.

Section 3. Expenditures made by a candidate or an incumbent officeholder during a year in which he will not appear on the ballot as a candidate shall be subject to strict scrutiny. If the registry staff, in the course of reviewing a candidate's or incumbent's campaign finance statements, determines that a questionable expenditure has been made, whether or not the expenditure was made during an election year, the burden shall be on the candidate or incumbent to prove that the expenditure was directly and primarily related to his candidacy.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: December 9, 1993

FILED WITH LRC: December 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 24, 1994, at 9 a.m., at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 1994, five days prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Stanley

(1) Type and number of entities affected: This proposed administrative regulation will affect all candidates for public office in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional paperwork will result except some recordkeeping on vote haulers.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork will result to the agency.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the agency was required by statute to promulgate this administrative regulation.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is not applied because these provisions regarding allowable campaign expenditures apply in a uniform manner to all candidates for public office.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments

201 KAR 7:085. Repeal of 201 KAR 7:030, 201 KAR 7:060, 201 KAR 7:080, and 201 KAR 7:110.

RELATES TO: KRS Chapter 334

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: 201 KAR 7:030 is no longer required since the provisions for the apprentice period are contained in KRS 334.090. 201 KAR 7:060 is no longer needed since the requirement for duplicate licenses is contained in KRS 334.020. 201 KAR 7:080 is no longer required since the provisions for the buyers receipt are contained in KRS 334.030. 201 KAR 7:110 is no longer needed since the provisions for meetings are contained in KRS 334.160.

Section 1. 201 KAR 7:030, Trainee apprenticeship; 201 KAR 7:060, Display of licenses, duplicates; 201 KAR 7:080, Buyer's receipt; and 201 KAR 7:110, Board meetings, are hereby repealed.

STEVEN W. BARLOW, Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 16, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1994, at 9 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There are approximately 300 individuals credentialed by the board who would come under this administrative regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: This administrative regulation repeals four existing administrative regulations no longer needed because of changes in KRS Chapter 229.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Administrative regulations would conflict with statute if left in existence.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. This administrative regulation repeals administrative regulations which are no longer needed.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors

201 KAR 15:090. Hearings.

RELATES TO: KRS 316.155
STATUTORY AUTHORITY: KRS 316.210(4)
NECESSITY AND FUNCTION: This regulation is necessary to comply with KRS 13A.100 which requires that the board prescribe procedures to be utilized in the conduct of hearings by the board. The function of this administrative regulation is to establish hearing procedures.

Section 1. A party may:
(1) Represent himself; or
(2) Be represented by an attorney.

Section 2. Presiding Officer. (1) The presiding officer shall be:
(a) The president of the board; or
(b) Any person designated by the chairman to serve as the presiding officer.
(2) The presiding officer may:
(a) Issue subpoenas;
(b) Authorize the taking of depositions;
(c) Require production of documents;
(d) Administer oaths;
(e) Examine witnesses;
(f) Render decisions on motions, requests, or other matters that do not result in a final disposition of the complaint;
(g) Receive evidence; and
(h) Take other action required in the conduct of hearings.

Section 3. (1) A presiding officer or board member may be disqualified for:
(a) Bias or prejudice;
(b) Conflict of interest;
(c) Violation of the provisions of statutes or administrative regulations governing board hearings; or
(d) Other causes for which a judge may be disqualified.
(2)(a) A party may make a written motion to disqualify a presiding officer or board member upon:
1. Receipt of notice of the identity of the presiding officer; or
2. Discovery of facts establishing grounds for disqualification of the presiding officer or board member.
(b) The motion shall state the facts or reasons supporting it.

Section 4. Evidence. (1) Formal rules of evidence shall not apply.
(2) The presiding officer may exclude evidence that is:
(a) Irrelevant;
(b) Immaterial;
(c) Unduly repetitious; or
(d) Excludable on:
1. Constitutional or statutory grounds; or
2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.
(3) Testimony or other evidence may be admitted if it is:
(a) Based on facts; and
(b) Commonly relied upon by reasonably prudent persons.
(4) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing other relevant evidence.
(5) The presiding officer may admit party or witness testimony taken by deposition if:
(a) A party or witness is unable to attend through no fault of his own; and
(b) The opposing party has had a full opportunity to cross-examine the party or witness.
(6) Evidence may be received in written form if it will:
(a) Expedite the hearing; and
(b) Not substantially prejudice the interest of a party.
(7) Official notice may be taken of:
(a) A fact that would be judicially noticed in the courts of the Commonwealth;
(b) The record of other proceedings before the board;
(c) Technical or scientific matters within the specialized knowledge of the board; and
(d) Codes or standards that have been adopted by:
1. An agency of the United States, the Commonwealth, or another state; or
2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.

Section 5. Separation of Functions. A person shall not participate as a board member in the adjudication of a matter, or serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator, prosecutor, or complainant with regard to the subject matter of the hearing.

Section 6. Procedure at Hearing. A hearing shall proceed as follows unless altered by the presiding officer:
(1) Opening statements by:
(a) Board or its counsel; and
(b) Respondent or respondent's counsel.
(2) Board presentation of:
(a) Witnesses; and
(b) Evidence.
(3) Respondent's presentation of:
(a) Witnesses; and
(b) Evidence.
(4) Closing arguments by:
(a) Board or its counsel; and
(b) Respondent or respondent's counsel.
(5) The presiding officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 7. Posthearing Procedure. (1) If the hearing has not been conducted by the board, the presiding officer shall prepare and submit to the board findings of fact, conclusions of law, and recommended order.
(2) A copy of the findings of fact, conclusions of law, and recommended order, or decision if the board has conducted the hearing, shall be mailed to all parties of record.
(3)(a) If the hearing was not conducted by the board, a party may file exceptions to the presiding officer's findings of fact, conclusions of law, and recommended order within fifteen (15) days of their submission to the board.
(b) If the hearing was conducted by the board, a party may not file exceptions to the board's findings of fact, conclusions of law, and order.
(4) The board may:
(a) Adopt the findings of fact, conclusions of law, and recommended order of the presiding officer;
(b) Prepare its own findings of fact, conclusions of law, and order;
(c) Remand for further action by the presiding officer; or
(d) Take any action it deems necessary to resolve the issues raised by the hearing.
(5) The decision of the board shall:
(a) Be in writing; and
(b) Contain a statement of its:
1. Findings of fact;
2. Conclusions of law; and
3. Order.

EDD PRESTON, President
APPROVED BY AGENCY: December 6, 1993

FILED WITH LRC: December 7, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 26th day of January, 1994, at 9 a.m. in the Capitol Annex, Room 127, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 21st day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William B. Pettus, Assistant Attorney General, Office of Attorney General, Capitol Building, Frankfort, Kentucky, 40601, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: William B. Pettus

(1) Type and number of entities affected: Approximately 1821 embalmers and funeral directors licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of the anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods: reasons why alternatives were rejected: This proposal establishes a new regulation to comply with state law. No other alternatives were deemed appropriate.

(5) Identify any state or federal statute or regulation that may conflict with, overlap, or duplicate the administrative regulation being promulgated: There is no such statute or regulation.

(6) Any additional information or comments: None

TIERING? Was tiering applied? No. Tiering was not applied because all licensees are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board

201 KAR 30:140. Transitional licensed real property appraiser.

RELATES TO: KRS 324.010, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.065

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish a temporary class of transitional licensed real property appraiser.

Section 1. "Transitional licensed real property appraiser" means an appraiser who has fulfilled the requirements previously established by the board for transitional licensure and has been issued a transitional license by the board to appraise real property in connection with federally and nonfederally related transactions.

Section 2. (1) "Transitional licensed real property appraiser" is a type of appraiser.

(2) A transitional licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less than $1,000,000;

(b) Complex, one (1) to four (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

Section 3. A transitional licensed real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice".

Section 4. A transitional licensed real property appraiser license issued by the board shall automatically expire two (2) years after the date of its issuance by the board and the license shall not be renewable.

Section 5. The board shall not administer examinations for transitional real property appraiser after the effective date of this administrative regulation.

Section 6. The board shall not issue any additional licenses for transitional real property appraiser after the effective date of this administrative regulation.

DON C. PARIS, Chairman

APPROVED BY AGENCY: November 19, 1993

FILED WITH LRC: December 13, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 24th day of January, 1994 at 9 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by the 19th day of January, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Contact Person: James P. Daniels

(1) Type and number of entities affected: Approximately 152 persons licensed as a transitional licensed real estate appraiser in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of amending existing regulations twice as opposed to amending existing regulations once and promulgating this new regulation was rejected as unnecessarily confusing and time consuming.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or regulation.

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all appraisers are treated uniformly under the law.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:080. Limited commercial driver's license for farm-related service industries.

RELATES TO: KRS 186.531, Chapter 281A, 49 CFR Part 383

STATUTORY AUTHORITY: KRS 186.400, 281A.040, 281A.150, 281A.0901, 49 CFR Part 383

NECESSITY AND FUNCTION: The Federal Highway Administration on April 17, 1992 published in the "Federal Register" a notice that it was allowing limited waivers from some of the provisions of 49 CFR Part 383 relating to the commercial driver's license (CDL) for certain employees of custom harvesters, farm retail outlets and suppliers, agrichemical businesses and livestock feeders. Each state is allowed to waive, at its option, these employees from the commercial driver's license knowledge and skills testing requirements and issue these employees limited CDL's for a seasonal period. The Transportation Cabinet has made a commitment to the motor carrier industry to be no more stringent than required by FHWA in the implementation in Kentucky of the commercial driver's license program. Since FHWA has determined that the granting of this limited authority waiver would not be contrary to the public interest and would not diminish the safe operation of commercial motor vehicles, the Kentucky Transportation Cabinet, through this administrative regulation, adopts this waiver program.

Section 1. Definitions. "Farm-related service industry" means a custom harvester, a farm retail outlet or supplier, an agrichemical business or a livestock feeder.

Section 2. Eligibility Requirements. (1) A commercial driver employed by a farm-related service industry may apply for a farm-related service industry limited commercial driver's license.

(2) To be eligible for the limited farm-related service industry commercial driver's license, the applicant shall:

(a) Possess a valid Kentucky motor vehicle operator's license issued pursuant to KRS Chapter 186;

(b) Have been a Kentucky licensed motor vehicle operator for at least one (1) year;

(c) Be at least eighteen (18) years of age;

(d) Have a current medical certificate as provided by 601 KAR 1:005;

(e) Pass the vision test for commercial drivers administered by the Kentucky State Police;

(f) Not have had his driving privilege suspended, canceled, revoked or otherwise withdrawn for any reason during the preceding two (2) years;

(g) Not have had during the preceding two (2) years a conviction in any type of motor vehicle of any of the following:

1. Driving under the influence of alcohol or other substance which may impair one's driving ability;

2. Leaving the scene of an accident;

3. Committing any felony involving a motor vehicle;

4. Speeding fifteen (15) miles per hour or more above the speed limit;

5. Reckless driving;

6. Improper or erratic lane changes;

7. Following too closely; or

8. Accident-related traffic law violation;

(h) Not have had an at-fault accident within the immediately preceding two (2) years; and

(i) Not be the holder of any type commercial driver's license.

(3) In place of the medical certificate and vision test, the applicant may have been issued a medical waiver pursuant to 601 KAR 11:040.

(4) The applicant shall not be required to submit to the knowledge or skills test required of other CDL applicants.

Section 3. Application for the Limited CDL. (1) Application for the limited farm-related service industry commercial driver's license shall be made on form TC 94-17, "Farm-Related Services Restricted CDL Application", as effective January, 1993. This form is incorporated by reference as a part of this administrative regulation.

(2) The completed application shall be submitted to the driver license issuing office of the jurisdictional circuit court clerk.

(3) The holder of a valid operator's license who has less than six (6) months until his scheduled renewal of his operator's license may apply for an early renewal of his operator's license at the same time he applies for a limited farm-related services commercial driver's license.

(4) The form TC 94-17 incorporated by reference in subsection (1) of this section may be viewed, copied or obtained from the Division of Driver Licensing, Second Floor, State Office Building, Frankfort, Kentucky 40622 or the driver license issuing office of any circuit court clerk. The telephone number of the Division of Driver Licensing is (502) 564-6800. Its hours of business are 8 a.m. to 4:30 p.m. eastern time on weekdays.

Section 4. Validity of the Limited CDL. (1) A qualified applicant may apply for any one (1) of the following limited farm-related service industry commercial driver's licenses:

(a) One valid for sixty (60) days;

(b) One valid for 120 days; or

(c) One valid for 180 days.

(2) A person shall not possess a limited farm-related service industry commercial driver's license for more than 180 days in any twelve (12) month period.

(3) If the limited farm-related service industry commercial driver's privilege to operate any motor vehicle expires, is cancelled, or is withdrawn for any reason, his limited commercial driving privilege shall be terminated at the same time.

(4) A limited farm-related commercial driver who has at least sixty (60) additional days' time of eligibility in the twelve (12) month period may apply to the driver licensing issuance office of the circuit clerk for an extension of his limited farm-related service industry commercial driving privilege. Prior to issuing the extension to his limited commercial driving privilege, his driving history record shall be examined for eligibility with the requirements of Section 2 of this administrative regulation.

(5) A limited farm-related service industry commercial driver's license shall not be valid for the operation of a class "A" vehicle as defined in KRS 281A.170.

(6) A limited farm-related service industry commercial driver's license shall only be valid within 150 highway miles of the employing farm-related service industry.

(7) A limited farm-related service industry commercial driver's license shall not be valid for those commercial drivers transporting hazardous materials as defined in 601 KAR 1:025 except the following:

(a) 1000 gallons or less of diesel fuel; or

(b) Anhydrous ammonia or other types of liquid fertilizer transported in a vehicle or implement of husbandry with a total capacity of 3000 gallons or less.

(8) A limited farm-related service industry commercial driver's license shall only be valid if accompanied by a valid operator's license displaying the following:

(a) An "F" restriction; and

(b) Either a "B" or "C" class commercial driver's license.

Section 5. Fees. (1) Each year at the initial application pursuant to Section 4(1) of this administrative regulation, the applicant for a limited farm-related service industries commercial driver's license shall pay a ten (10) dollar fee to the circuit court clerk for the issuance of the photo farm services CDL which shall be accompanied by the operator's license.

(2) The applicant for a duplicate or extension to the farm services commercial driver's license during a twelve (12) month period in which he has already paid the fee specified in subsection (1) of this section shall pay a fee of three (3) dollars to the circuit court clerk for the issuance of a new limited farm-related service industries commercial driver's photo license which shall be attached to the motor vehicle operator's license.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: November 16, 1993

FILED WITH LRC: November 23, 1993 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 28, 1994 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 10th Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 23, 1994 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 23, 1994. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on January 28, 1994. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: It is anticipated that only 100 persons will apply for this limited type of commercial driver's license each year.

(a) Direct and indirect costs or savings to those affected: There will be a direct cost of $10 each time the person is issued a farm-related services limited CDL. In addition, the person will have to apply for a duplicate license with the farm limited endorsement on it. The cost of this is $10 with a total cost of $20. However, the person will be able to operate commercial motor vehicles without obtaining a full-fledged CDL, without taking the tests or paying the full fee. The fee for the first 4 years would be $75, but payable up front. If the person obtains a limited CDL each year, the total cost will be $5 more than a full-fledged CDL for the same period of time. However, it is likely that anyone who would operate commercial vehicles on such a regular basis would go ahead and obtain a full CDL.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: It is necessary that the applicant complete a form in order to obtain a limited CDL.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There should be a net cost/savings of $0. It is anticipated that the portion of the fee which will be returned to the Transportation Cabinet by the license-issuing clerk will offset the cost to the cabinet for issuing the limited CDL and so noting in the computer system.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Federal Highway Administration issued a notice that the individual states may issue a limited commercial driver's license to persons operating in farm-related industries. The Kentucky Farm Bureau requested that the Transportation Cabinet issue the limited CDL. Farm-related industries such as seed-sellers and fertilizer dispensers use a lot of seasonal or temporary help. It would be almost impossible for them to find such persons who had CDL's. Therefore, the Transportation Cabinet agreed to issue the intrastate limited commercial driver's license.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. The issuance of the limited commercial driver's license is a tiering in itself.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the issuance of a farm-related industries limited commercial driver's license. However, if the individual state decides to issue the license (as Kentucky has now done), 49 CFR Part 383 sets the standards for the issuance of the limited CDL.

2. State compliance standards. Kentucky will allow employees of custom harvesters, farm retail outlets and suppliers, agrichemical businesses and livestock feeders to obtain a limited and seasonal CDL without passing the knowledge and skills test. The seasonal period cannot exceed 120 days in each year.

3. Minimum or uniform standards contained in the federal mandate. FHWA allows each state to waive, at its option, these employees from the commercial driver's license knowledge and skills testing requirements and issue these employees limited CDL's for a seasonal period. The seasonal period cannot exceed 180 days in each year.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The mandate does not cover the fee for the issuance of the limited CDL license, but a fee to cover administrative costs is included in the administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 281A allows the state to set fees for the issuance of CDL's.

CABINET FOR HUMAN RESOURCES
Office of Personnel Management

900 KAR 3:011. Repeal of 900 KAR 3:010, Cabinet for Human Resources personnel policies.

RELATES TO: KRS 13A.120, 13A.130, 194.050
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: 900 KAR 3:010 incorporates by reference the Cabinet for Human Resources Personnel Policy Manual into an administrative regulation. This administrative regulation is no longer necessary because KRS Chapter 18A authorizes the Commissioner of Personnel to promulgate administrative regulations for the classified and unclassified service and KRS 13A.130 prohibits internal policy in conflict with statutes and administrative regulations.

Section 1. 900 KAR 3:010, Cabinet for Human Resources personnel policies, is hereby repealed.

ROBIN G. HEARN, Executive Director
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 24, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 21, 1994 at 9 a.m., in the Health Services Auditorium, located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: James Lambert
(1) Type and number of entities affected: No impact on CHR employees.
(a) Direct and indirect costs or savings to those affected: These regulations do not directly involve costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because this regulation applies equally to all individuals regulated by it.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety

902 KAR 10:071. Repeal of 902 KAR 10:070.

RELATES TO: KRS 211.375
STATUTORY AUTHORITY: KRS 194.050, 211.350
NECESSITY AND FUNCTION: 902 KAR 10:070 authorizes the Cabinet for Human Resources to charge a fee for costs of publication and dissemination of on-site sewage disposal system manuals. This administrative regulation is no longer necessary because the cost of the manual will be included in the fee for an on-site sewage disposal system permit.

Section 1. 902 KAR 10:070, On-site sewage disposal manuals, is hereby repealed.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 12, 1993
FILED WITH LRC: December 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon Stumbo

(1) Type and number of entities affected: Approximately 10,000 sold each year to the general public.

(a) Direct and indirect costs or savings to those affected:

1. First year: Savings of $2 per manual requested by installers or homebuilders.

2. Continuing costs or savings: Savings of $2 per manual requested by installers or homebuilders.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): No effect on competition, all entities affected equally.

(b) Reporting and paperwork requirements: Reduced paperwork requirements due to elimination of payments and billings for currently required fees.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduced paperwork requirements due to elimination of billing for fees.

(3) Assessment of anticipated effect on state and local revenues: No changes.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Increase of fees to cover increased printing and billing costs are rejected because other funding sources are available that can provide the manuals at less cost.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Existing fees for on-site sewage disposal system permits will pay for manual printing costs. This will allow the promulgating body to eliminate billing paperwork.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect all local governmental agencies who request information regarding on-site sewage disposal systems.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the county or district health department's regulation of the installation of on-site sewage disposal systems.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Technical and nontechnical manuals will be provided at no charge to health departments, other government agencies or individuals.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

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

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 217C.040 authorizes the Cabinet for Human Resources to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for the production, handling, examination, grading, and sale of manufacturing milk and milk products.

Section 1. Manufacturing Milk Producer Permits and Inspections. (1) Prior to the issuance of any permit to a manufacturing milk producer, the cabinet shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with 902 KAR 50:032, a permit shall not be issued, the violation shall be given in writing, and the violation shall be posted in a visible place at the dairy farm. A permit may be issued if the inspection reveals substantial compliance with 902 KAR 50:032.

(2) All producers shall possess a valid permit prior to beginning shipment of milk.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

Section 2. Producer Eligibility Requirements. (1) New producers. A test for bacterial quality and sediment shall be made on the first shipment of milk or after a period of nonshipment for more than ten (10) days. Subsequent tests of milk shall meet the requirements for frequency of testing and producer compliance outlined in Section 3(2)(a) of this administrative regulation.

(2) Transfer producers. Prior to collection and acceptance of milk from a transfer producer, the receiving company shall review the official status of the producer with the cabinet. The existing status of a transfer producer with regard to his farm sanitation and milk quality record shall be in effect with the receiving company. A producer whose permit has been suspended by the cabinet is not eligible to transfer until the permit has been reinstated, unless approved by the cabinet. The receiving company shall sample each transfer producer's milk within ten (10) days after receipt of the producer's first shipment of milk. Subsequent sample results shall be in accordance with the provisions of Section 3 of this administrative regulation.

(3) Any Grade A producer whose permit has been suspended shall be allowed to sell milk as a degraded producer to a manufacturing milk company if the Grade A violative sample is within manufacturing standards set forth in this administrative regulation. A degraded producer shall not sell milk to a manufacturing milk company for a period in excess of ten (10) days without applying for and obtaining a milk for manufacturing producer permit.

(4) Grade A surplus milk shall be tested or screened by the manufacturing milk company upon arrival to assure that the milk is in compliance with this administrative regulation.

Section 3. Quality Requirements for Raw Milk. (1) Basis. Classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor), bacterial estimate, quality test for sediment content, abnormal milk, and drug residue testing.

(a) Sight and odor. Flavor and odor of acceptable raw milk shall be fresh and sweet. Milk shall be free from feed and other off-flavors and off-odors that would adversely affect the finished product. Milk shall be observed and shall not show an abnormal condition (ropy, bloody, or mastitic).

(b) Bacterial classification. Bacterial limit shall be 1,000,000/ml by standard plate count, plate loop method, or direct microscopic bacterial determination methods.

Bacterial Estimate Classification	Direct Microscopic Clump Count, Standard Plate Count, or Plate Loop Method
No. 1 Satisfactory	Not Over 500,000/ml.
No. 2 Satisfactory	Not Over 1,000,000/ml.
Undergrade	Over 1,000,000/ml.

(c) Sediment content classification.

Sediment Content Classification	Milk in Cans (off-the-bottom method) 1 1/8 inch diameter disc	Milk in Farm Bulk Tanks sample 0.40 inch diameter disc
No. 1 Acceptable equivalent	Not to exceed 0.50 mg.	Not to exceed 0.50 mg.
No. 2 Acceptable equivalent	Not to exceed 1.50 mg.	Not to exceed 1.50 mg.
No. 3 Probational equivalent	Not to exceed 2.50 mg.	Not to exceed 2.50 mg.
No. 4 Reject equivalent	Over 2.50 mg.	Over 2.50 mg.

(d) Abnormal milk. Somatic cell count limit shall not exceed 1,000,000/ml.

(e) Drug residue classification. Test results shall be negative on commingled load or individual producer test as determined in 902 KAR 50:033, Section 1(5).

(2) Examinations and tests. Examinations and tests to detect excessive water, chemical contaminants, or other adulterants shall be conducted by the cabinet as deemed necessary.

(a) Frequency of tests.

1. Bacterial estimate: monthly.
2. Sediment content: monthly.
3. Abnormal milk: four (4) times each six (6) months.
4. Drug residues: all marketed manufacturing grade milk shall be sampled and tested for drug residues prior to processing.
5. Excessive water, chemical contaminants, or other adulterants: as deemed necessary by the cabinet.

(b) Methods of testing. Methods for determining quality test shall be those described in the "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992, published by the American Public Health Association, and the "Official Methods of Analysis", 15th Edition, 1990, Volumes I and II, published by the Association of Official Analytical Chemists, Inc., unless otherwise approved by the cabinet, and shall be performed in an official laboratory or an officially designated laboratory. Copies of the "Standard Methods for the Examination of Dairy Products", revised 1992, incorporated by reference, and the "Official Methods of Analysis", revised 1990, are incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 4. Personnel Health and Cleanliness. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, shall work at any dairy farm in any capacity which brings him in contact with the production, handling, storage, and transportation of milk for manufacturing purposes, containers, equipment, and utensils. No milk producer shall employ in any capacity any person suspected of having any disease in a communicable form, or of being a carrier of a communicable disease. Any milk producer upon whose dairy farm any communicable disease occurs or who suspects that any employee has contacted any disease in a communicable form, or has become a carrier of a disease in a communicable form, shall notify the cabinet immediately. All persons engaged in the milking operation shall wear clean outer garments. The milker's hands shall be kept clean.

Section 5. Procedure If Infection is Suspected. If reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk for manufacturing purposes, the cabinet shall require the following measures:

(1) Immediate exclusion of that person from milk handling;

(2) Immediate exclusion of the milk supply concerned; and

(3) Medical and bacteriological examination of the person and body discharges.

Section 6. Prohibited Acts Relating to Manufacturing Milk Producers. The following acts are prohibited:

(1) No person shall produce, sell, or offer for sale any manufacturing milk or milk products without a permit as provided in 902 KAR 50:032, 902 KAR 50:033, and this administrative regulation.

(2) No person shall produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any manufacturing milk or milk product which is adulterated, misbranded, or in violation of 902 KAR 50:032, 902 KAR 50:033, or this administrative regulation.

(3) No person shall prohibit entry of inspection, taking of a sample, or access to records or evidence to a duly authorized agent of the cabinet.

(4) No person shall remove, destroy, alter, forge, or falsely represent, without proper authority, any tag, stamp, mark, or label used by the cabinet.

(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the cabinet.

Section 7. Survey Procedures. A survey shall be conducted at least one (1) time every two (2) years on all groups of producers assigned to milk companies, producer associations, or producer groups. If the survey indicates an unsatisfactory rating, the company, association, or group shall be notified and given a reasonable period of time, not to exceed six (6) months, to attain a satisfactory rating. If upon resurvey, the producer's rating is not an acceptable level, the producer shipping milk to the company shall be inspected by the cabinet to determine individual compliance. A producer in violation may have his permit suspended in accordance with 902 KAR 50:032, 902 KAR 50:033, and this administrative regulation. No producer shall be allowed to transfer to another company during the resurvey period unless authorized by the cabinet.

Section 8. Repeal. 902 KAR 50:030, Raw millk standards, is hereby repealed.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 18, 1993

FILED WITH LRC: November 16, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to

appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee

(1) Type and number of entities affected: Approximately 400 milk for manufacturing dairy farms. These farms have been in compliance since the program was implemented on June 7, 1993.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Dairy plants will be required to maintain drug residue sampling and testing records specified by the United States Department of Agriculture.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of plant records and enforcement of regulations.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal Mandate (attached).

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No revenue generated.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Code of Federal Regulations 7 CFR Part 58.

2. State compliance standards. Relates to KRS 217C.010 to 217C.090.

3. Minimum or uniform standards contained in the federal mandate. Provide that all manufactured milk be sampled and tested for beta lactum drugs, define regulatory and industry responsibilities, provide for a state-sanctioned penalty to be imposed on producers who ship milk containing drug residues and that they participate in milk-quality improvement educational program, and provide detailed guidelines for labeling and storage of farm chemicals and animal drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

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

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 217C.040 authorizes the Cabinet for Human Resources to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for herd health; the production, handling, and sale of manufacturing milk and milk products; and, construction and inspection of dairy farms.

Section 1. Farm Requirements for Milk for Manufacturing. (1) Health of herd.

(a) General health. All animals in the herd shall be maintained in a healthy condition.

(b) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the cattle have been found to be infected with tuberculosis. This requirement is in accordance with the provisions of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", February 3, 1989, incorporated by reference, for establishing and maintaining tuberculosis-free herds of cattle and modified accredited areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. If the herd is not located in a modified accredited area, it shall be tested annually under the jurisdiction of the program. Additions to the herd shall be from a modified accredited area or from herds meeting the requirements of this administrative regulation. Copies of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules" are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(c) Brucellosis test. The herd shall be located in an area within the state in which the percentage of cattle affected with brucellosis does not exceed one (1) percent, and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This requirement is in accordance with provisions of the "Brucellosis Eradication, Uniform Methods and Rules", May 6, 1992, incorporated by reference, for establishing and maintaining certified brucellosis-free areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. If the herd is located in an area that does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. Additions to the herd shall be from herds meeting the requirements of this administrative regulation. Copies of the "Brucellosis Eradication, Uniform Methods and Rules" are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(2) Milking procedures. Milking shall be done in an approved milking barn, stable, or parlor under relatively dust free conditions.

(a) The udders, flanks, and teats of all milking cows shall be free of dirt and dust at time of milking as far as is practicable.

(b) Cows which secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply, and shall be prohibited from sale under this administrative regulation.

(3) Milking barn or milking area. An approved milking area shall be provided to permit normal sanitary milking operations.

(a) Work areas shall have a minimum of ten (10) foot candles of light properly distributed for both day and night milking.

(b) The milking area shall be well ventilated to minimize odors and prevent excessive condensation.

(c) Floors and gutters shall be kept clean, in good repair, graded to drain, and constructed of concrete or other impervious materials.

(d) No swine or fowl shall be permitted in the milking area.

(e) Bedding shall be permitted in the milking area if kept clean and manure is removed daily. Bedding shall be relatively dust free.

(f) The milk area ceiling shall be dust tight to prevent the entry of dust from feed stored overhead.

(g) Walls and ceilings shall be kept clean and in good repair. It is recommended that the milking area be completely enclosed. If clean, orderly, dust free milking operations can be conducted, the requirements of the walls may be waived.

(h) Feed shall be stored in a manner not to increase the dust content of the air or attract flies in the milking area.

(i) The milking area floor shall be kept clean and the manure removed daily.

(j) Outside surfaces of pipeline systems located in the milking area shall be kept clean.

(k) Milk stools, surcingles, and antikickers shall be kept clean and stored above the floor.

(4) Cowyard and cattle housing area. The cowyard and cattle housing area shall be constructed to be well drained and relatively free of organic waste.

(a) The cowyard shall be graded to drain as well as local conditions will permit.

(b) Cowyards which are muddy due to recent rains shall not be considered in violation of this section.

(c) The cattle housing area shall be free of excessive manure, soiled bedding, and waste material to prevent the soiling of cows' udders.

(d) All manure removed from the milking area shall be stored to prevent access of cows to the accumulation. Manure shall be stored to minimize fly breeding.

(5) Milkhouse or milkroom. There shall be a conveniently located milkhouse or milkroom in which the cooling, handling, and storing of milk; and the washing, sanitizing, and storing of equipment and utensils shall be done. Milking areas with milkhouse and milkroom facilities combined in an operation that have been given approval prior to the effective date of this administrative regulation, will be acceptable for as long as the combined facility is operated in a sanitary manner.

(a) The floor shall be constructed of concrete and well drained.

(b) The walls and ceilings shall be constructed of relatively smooth, easily cleanable material. A light colored material is recommended.

(c) A drain through the floor or wall shall be provided. The drain shall not be located under the can cooler or bulk tank. The drain may discharge to the surface of the ground if waste from the drain does not pool or cause an insect breeding problem.

(d) The milkhouse space shall be large enough to meet the following requirements:

1. Walkways and working areas shall be a minimum of thirty (30) inches wide;

2. The bulk tank shall be kept a minimum of eighteen (18) inches from the walls on all sides, except tanks that extend through the wall; and

3. There shall be a minimum of six (6) inches between the lowest point of the bulk tank and the floor.

(e) Artificial light shall be provided with a minimum 100 watts capacity. The light fixture shall not be located over the bulk tank. Flood lights are recommended near the ends of the bulk tank.

(f) Ventilation shall be sufficient to prevent odors and condensation.

(g) The milkhouse shall be kept clean and free from unnecessary articles and used only for purposes permitted by the cabinet. Only insecticides and rodenticides approved for use in the milkhouse shall be stored in the milkhouse. Insecticides and rodenticides shall be stored to prevent contamination of milk, milking equipment, sinks, or cleaning supplies.

(h) All outer openings shall be screened or protected against the entrance of insects and rodents. Outer doors shall open outward and be self-closing, except doors between the milkroom and milking area may open either way or both ways and shall be self-closing. If during the winter months a screen door is taken down, the milkhouse door may open inward if it is self-closing. Bulk tank installations shall have an approved hose port properly constructed through the outer wall for milk pickup operations.

(i) Running water under pressure shall be provided. Water heating facilities conveniently available to supply hot water to the milkhouse shall be provided for all bulk tank installations. A supply of water shall be available to the milkroom for all can shippers.

(j) A two (2) compartment wash and rinse vat shall be provided; if milking equipment is cleaned in place, a single compartment wash vat will be acceptable.

(k) A concrete slab at least four (4) feet by four (4) feet shall be located outside the milkhouse under the hose port.

(l) The milkhouse shall be supplied with approved brushes, cleaners, and sanitizers to properly clean and sanitize equipment and utensils.

(m) If approval is given by the cabinet, the can cooler may be stored in a suitable place away from the milkhouse in order to be easily accessible to the can hauler.

(6) Utensils and equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition. Milk equipment shall be free from rust, open seams, milkstone, or any unsanitary condition. Milk equipment shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. All farm bulk tanks installed after the effective date of this administrative regulation shall meet "3-A Sanitary Standards", for construction and shall be installed in accordance with this administrative regulation. Single service articles shall be properly stored and shall not be reused. "3-A Sanitary Standards", revised May 1993, is incorporated by reference, and a copy is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(a) Utensil - construction.

1. All multiuse containers, utensils, pails, and pipelines shall be constructed of smooth, heavy-gauge material, with a noncorrodible surface which is nonabsorbent and nontoxic (the use of cadmium is prohibited), and shall be constructed to be easily cleaned. All joints and seams shall be flush with solid welds or use "3-A Sanitary Standards" approved gaskets.

2. All containers, utensils, and other equipment shall be in good repair and free of breaks and corrosion.

3. Strainers, if used, shall be constructed to use single-service strainer pads only, and strainer pads shall not be reused. Woven-wire cloth strainers shall not be used.

4. All milking machines, including pails, milker heads, milk claws, milk tubing, and other milk contact parts shall be constructed to be easily cleaned.

5. New or replacement milk cans shall have an umbrella-type cover.

6. All cleaned-in-place milk pipelines installed after the effective date of this administrative regulation shall be installed to be rigid and self-draining. All connections shall provide a smooth, flush interior surface.

7. Pipelines installed prior to the effective date of this administrative regulation may be accepted if joined with tygon or other material approved by the cabinet, and if joints are hand cleaned or sufficiently

cleaned by C-I-P methods. Each joint shall have a tight, rigid hanger next to the joint.

(b) Utensils - cleaning. All multiuse containers, equipment, and other utensils used in handling, storage, or transportation of milk and milk products shall be thoroughly cleaned after each usage. All multiuse containers, equipment, and other utensils shall be stored in the milkhouse unless approved by the cabinet.

(c) Utensils - bacterial treatment. Prior to use, all multiuse containers, equipment, and other utensils used in handling, storage, or transportation of milk or milk products shall be subjected to a bactericidal process approved by the cabinet. Steam, hot-water, or hot-air treatment shall not be accepted unless the equipment or containers are completely immersed or exposed for the required time, or longer, and at the required temperature, or higher, throughout the period of exposure. Pouring hot or boiling water from vessel to vessel shall not be acceptable. All milk containers, utensils, and other equipment, with the exception of milking machine pulsators and air hoses, shall be immersed for at least one (1) minute in, or exposure for at least one (1) minute to a flow of, an approved chemical bactericide containing at least fifty (50) p.p.m. chlorine or other approved sanitizer of proper strength. All milk contact surfaces shall be wetted by the bactericidal solutions. Bactericidal sprays may be used for large equipment. Chemical solutions, once used, shall not be reused for bactericidal treatment on any subsequent day, but may be reused for other purposes.

(d) Utensils - storage. All containers and other utensils used in the handling, storage, or transportation of milk or milk products, unless stored in bactericidal solutions, shall be stored to drain dry, and to prevent contamination before being used. All equipment and utensils shall be accessible for inspection. All milking equipment containers and other utensils used shall be stored in the milkhouse unless otherwise approved by the cabinet.

1. Milk utensils and equipment shall be left in the bactericidal solution or stored in the milkhouse on racks to protect them from contamination, inverting articles that can be inverted. Pipeline milkers which are cleaned in place may be stored in place. Storage racks shall be constructed of metal protected against rusting, with the lowest shelf not less than twenty-four (24) inches above the floor.

2. Strainer pads, parchment papers, and gaskets shall be stored in the original package or in a suitable container or cabinet to protect them from contamination.

3. All equipment and utensils shall be accessible for inspection.

(e) Utensils - handling. After bactericidal treatment, containers and other milk and milk product utensils shall be handled to prevent contamination of any surface that milk or milk products come into contact. Sanitized product-contact surfaces, including farm bulk tank openings and outlets, shall be protected against contact with unsanitized equipment, utensils, hands, clothing, splash, condensation, and other sources of contamination. Any sanitized product-contact surface which has been exposed to contamination, shall be cleaned and sanitized before being used.

(7) Surroundings shall be relatively neat and clean to prevent insect breeding and rodent harborage.

Section 2. Cooling. (1) All milk shall be cooled within two (2) hours after milking to fifty (50) degrees Fahrenheit or lower and maintained at a maximum of fifty (50) degrees Fahrenheit until transferred to the transport truck, unless delivered to the plant within two (2) hours after milking. Milk in bulk tanks shall be cooled to a maximum of forty (40) degrees Fahrenheit within two (2) hours after milking and maintained at a maximum of fifty (50) degrees Fahrenheit until transferred to the transport truck. If the first milking does not reach the bulk tank agitators, cooling shall be considered in violation.

(2) Cooling facilities shall be available to cool and store a full supply of milk between pickup at a maximum of fifty (50) degrees Fahrenheit. Can milk shall be collected at least every twenty-four (24) hours.

(3) Bulk tanks shall be designed and sized for everyday or every other day pickup and be capable of cooling the milk to forty (40) degrees Fahrenheit after each milking and maintaining the milk to a maximum of fifty (50) degrees Fahrenheit. No bulk tank milk shall be picked up after three (3) days except in case of emergency. Paper towels shall be available for wiping the bulk tank measuring stick during milk pickup.

(4) Milk shall not be transferred from one (1) producer to another or received by one (1) producer from another.

Section 3. Water supply. (1) Each producer shall have a properly located and protected water supply.

(2) The supply shall meet the needs of the producer to properly clean equipment, milkhouse, and milking area.

(3) The supply shall be protected against surface water and, in the case of cisterns, have a filter or roof wash barrel approved by the cabinet.

(4) The supply shall not be within 100 feet of any cesspool, privy, or lateral field unless approved by the cabinet.

(5) If the cabinet is in doubt to the physical protection of the supply, a water sample shall be collected and analyzed by the cabinet. Samples that do not meet the requirements of this administrative regulation shall be retested within thirty (30) days after notification is given to the producer in writing by the cabinet. If two (2) consecutive samples are found to be in excess of the coliform standard, a notice of intent to suspend permit shall be issued by the cabinet and a follow-up sample collected within thirty (30) days. If the follow-up sample is in excess of the standard, the producer may be suspended until a negative sample is obtained.

(6) All new producers shall have a negative water sample analysis prior to the issuance of a permit. A negative water sample shall be taken after any repair or alteration of the water supply has been made and at least every thirty-six (36) months.

Section 4. Waste Disposal. (1) Manure, discarded milk, and toilet waste shall be properly disposed in a manner approved by the cabinet.

(2) Waste discharging to the ground surface shall not pool or promote fly breeding.

(3) Waste from flush type toilets shall be properly disposed underground.

(4) Pit privies shall be properly constructed to prevent fly breeding.

Section 5. Hearing Procedures. Upon notification of intent to suspend or upon suspension, the producer may request a hearing.

(1) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing", may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 18, 1993
FILED WITH LRC: November 16, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee
(1) Type and number of entities affected: Approximately 400 milk for manufacturing dairy farms. These farms have been in compliance since the program was implemented on June 7, 1993.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None
(b) Reporting and paperwork requirements: Dairy plants will be required to maintain drug residue sampling and testing records specified by the United States Department of Agriculture.
(2) Effects on the promulgated administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Monitoring of plant records and enforcement of regulations.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal Mandate (attached).
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: No revenue generated.
TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Code of Federal Regulations 7 CFR Part 58.
2. State compliance standards. Relates to KRS 217C.010 to 217C.090.
3. Minimum or uniform standards contained in the federal mandate. Provide that all manufactured milk be sampled and tested for beta lactum drugs, define regulatory and industry responsibilities, provide for a state-sanctioned penalty to be imposed on producers who ship milk containing drug residues and that they participate in milk-quality improvement educational program, and provide detailed guidelines for labeling and storage of farm chemicals and animal drugs.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

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

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 217C.040 authorizes the Cabinet for Human Resources to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for the enforcement of 902 KAR 50:031 and 902 KAR 50:032 pertaining to the production, transportation, handling, sampling, examination, grading, and sale of manufacturing milk and milk products; inspection of dairy farms; and, provides for the revocation and reinstatement of producer permits.

Section 1. Enforcement Procedures for Raw Milk. (1) Sight and odor. Bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by the milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk rejected for sight and odor by a hauler or milk grader shall be identified by coloring if in a can or tagged with a reject tag if in a bulk tank.
(2) Bacterial estimates. At least one (1) time each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested. Producers shall be notified of the results of all tests performed.
(a) A producer shall be given a notice of intent to suspend permit by the cabinet if two (2) of the last four (4) counts exceed bacterial standards specified in 902 KAR 50:031. An additional sample shall be taken within twenty-one (21) days of sending the notice, but not before the lapse of three (3) days. A producer shall remain under notice of intent to suspend permit if two (2) of the last four (4) samples exceed the standards.
(b) A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) samples exceed the standard.
(c) A producer may be issued a temporary permit by the cabinet upon receipt from the producer of a satisfactory farm inspection and Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. If the sample from the first milk offered for sale is in compliance, the permit is reinstated. If the sample is not in compliance, the temporary permit shall be withdrawn. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.
(d) Upon issuance of the temporary permit, the producer shall have no milk in the bulk tank produced during the period the permit was suspended unless specified by the cabinet. Three (3) samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.
(e) The cabinet may reinstate the producer's permit upon receipt of a bacteria sample in compliance with standards set in 902 KAR 50:031.
(3) Sediment.
(a) Bulk tank producers.
1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.
2. If the sediment disc is classified #3, the producer's milk may

be accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be issued a notice of intent to suspend permit and an additional sample shall be collected and tested. If the additional sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4, the producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(b) Can producers.

1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.

2. If the sediment disc is classified #3, the producer's milk may be accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be notified and additional samples shall be collected and tested. If the additional samples fail to obtain a #1 or #2 sediment sample result on two (2) consecutive samples, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4 the milk shall be rejected and an approved color added to the milk. The producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(4) Abnormal milk. Each producer shall be tested at least four (4) times each six (6) months and those tests showing a somatic cell count in excess of 1,000,000/ml. shall be notified in writing by the cabinet. If two (2) of the last four (4) somatic cell counts exceed 1,000,000/ml., the producer shall be given a notice of intent to suspend permit by the cabinet. The producer shall remain under notice if two (2) of the last four (4) samples exceed the limit. An additional sample shall be collected within twenty-one (21) days after issuance of the notice of intent to suspend permit, but not before the lapse of three (3) days. A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) somatic cell counts exceed the limit. Upon receipt of an "Application for Reinstatement of Permit", a sample shall be analyzed. If the sample is in compliance, the permit is reinstated. Three (3) samples shall be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(5) Drug residues.

(a) All marketed milk shall be sampled prior to processing using approved screening procedures defined in 902 KAR 50:031. If the presence of drug residue is detected, a confirmatory test approved by the cabinet shall be performed. If the confirmatory test result is positive for drug residue, the milk shall be disposed of either in a manner that removes it from the human and animal food chain or acceptably reconditioned for animal food as determined by the cabinet. If a commingled sample is positive, each producer represented in the sample shall be tested immediately.

(b) All positive drug residue sample results shall be reported to the Cabinet for Human Resources, Milk Control Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Milk for manufacturing permit shall be suspended upon confirmed positive drug residue sample.

1. First suspension within a twelve (12) month period shall require a two (2) day minimum loss of milk or equivalent as determined by the cabinet.

2. Second suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet.

3. Third suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet. The cabinet shall initiate administrative procedures to revoke the producer's permit by proceeding to an informal hearing.

(d) The milk for manufacturing permit shall be temporarily reinstated for fourteen (14) days if a negative drug residue sample of raw milk is reported to the cabinet, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

1. The milk for manufacturing permit shall be reinstated after the cabinet receives a copy of the "Milk and Dairy Beef Residue Prevention Protocol" Completion Certificate signed by the producer and his veterinarian. The "Milk and Dairy Beef Residue Prevention Protocol", 1993 Producer Manual, is published by Agri-Education, Inc., 801 Shakespeare Avenue, Stratford, Iowa 50249. The "Milk and Dairy Beef Residue Prevention Protocol", revised October 1, 1992, is incorporated by reference, and a copy is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

2. Failure to return the completion certificate within fourteen (14) days of the temporary reinstatement shall result in a minimum one (1) day temporary permit suspension.

(6) Excessive water.

(a) Milk producers with supplies found to contain at least ten (10) percent excessive water shall be issued a permit suspension requiring the supply to be withheld from sale immediately. Milk from this supply shall not be sold and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(b) Milk producers with supplies found to contain at least two (2) percent and less than ten (10) percent excessive water shall be notified of adulteration and retested after the lapse of three (3) days. If the retested sample continues to show at least two (2) percent and less than ten (10) percent excessive water, the producer's permit shall be suspended. Milk shall not be sold from this supply and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(c) Milk producers with supplies found to contain at least five-tenths (.5) percent but less than two (2) percent excessive water shall be notified. If the following sample shows at least five-tenths (.5) percent and less than two (2) percent excessive water, a supervised sample shall be collected. The supervised sample shall be used as a future reference for the accurate freezing point for the supply.

(7) Chemical contaminants.

(a) If laboratory results of an individual producer sample show a violation of an established tolerance level for a particular chemical contaminant, the supply shall be withheld from the market channels. The producer shall be notified immediately and confirmed in writing by the cabinet.

(b) Continued sampling of an excluded milk producer's supply shall be maintained until an acceptable level of the contaminant is attained. The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals, depending on the laboratory workload and the previous contaminant level. Higher chemical contaminant levels shall be sampled at lesser frequencies.

(c) If levels based on an official sample fall below acceptable tolerance levels, the producer shall be notified immediately and

confirmed in writing by the cabinet that the supply is again acceptable for sale.

(d) Producer assistance in testing individual cows, feeds, and water supplies may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and commercial laboratories.

Section 2. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) An individual producer's permit shall be suspended if the cabinet has reason to believe that a public health hazard exists; the producer has violated any of the requirements of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation; or the producer has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if the milk involved creates, or appears to create, an imminent hazard to the public health; or in any case of willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit. This notice shall specify the violation in question and afford the permit holder reasonable opportunity to correct the violation. Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(2) If the producer's permit has been suspended three (3) times within a twelve (12) month period for a violation of any type in accordance with 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation, the producer shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated. Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated. At this conference the cabinet may set conditions under which the permit may be reinstated. This permit suspension shall remain in effect until the conditions of the conference have been met. If a fifth suspension occurs within a twelve (12) month period, the cabinet shall proceed to a hearing. At this hearing the producer shall have the opportunity to show cause why the permit should not be permanently revoked, and the cabinet shall affirm, modify, or rescind the producer's permit.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension; the cabinet shall, within a reasonable time, proceed to hearing to ascertain the facts of the violation or interference.

(a) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing", may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(b) The cabinet shall notify the requesting party in writing of the:

1. Name of the hearing officer; and
2. Time and place of the hearing.

(c) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses.

(d) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(e) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

(4) Any permit suspended under the provisions of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation may be reinstated by submission of satisfactory evidence to the cabinet that the violation has been corrected.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 18, 1993

FILED WITH LRC: November 16, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 21, 1994, at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by January 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Klee

(1) Type and number of entities affected: Approximately 400 milk for manufacturing dairy farms. These farms have been in compliance since the program was implemented on June 7, 1993.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Dairy plants will be required to maintain drug residue sampling and testing records specified by the United States Department of Agriculture.

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of plant records and enforcement of regulations.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal Mandate (attached).

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No revenue generated.

TIERING: Was tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Code of Federal Regulations 7 CFR Part 58.

2. State compliance standards. Relates to KRS 217C.010 to 217C.090.

3. Minimum or uniform standards contained in the federal mandate. Provide that all manufactured milk be sampled and tested for beta lactum drugs, define regulatory and industry responsibilities, provide for a state-sanctioned penalty to be imposed on producers who ship milk containing drug residues and that they participate in milk-quality improvement educational program, and provide detailed guidelines for labeling and storage of farm chemicals and animal drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:001. Definitions.

RELATES TO: KRS 205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 15 USC 1673(b), 31 USC 7502

STATUTORY AUTHORITY: KRS 194.050, 205.710-205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the CSEP.

Section 1. Definitions of terms utilized in administrative regulations relating to the CSEP are as follows:

(1) "Absent parent" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(2) "Any other person or entity that may have standing to request a modification" means a nonparental client.

(3) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by an absent parent.

(4) "Assignment of rights" means the written transfer of rights to any child support or any medical support obligation to the state.

(5) "Assigned support obligation" means any child support or medical support obligation assigned to the state.

(6) "Authority to collect" means the nonpublic assistance client's authorization for the Cabinet for Human Resources to collect child support owed on behalf of the child for whom the cabinet is providing child support services.

(7) "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming interstate request; and

(b) Responding to an inquiry received from another state regarding an interstate case.

(8) "Default" means the absent parent's failure to return a financial statement or to keep an appointment, and the absent parent's income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(9) "Dispute hearing" means the process whereby an absent parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(10) "Distribution" means either a disbursement of collection to the family or an allotment of various portions of the collections to the state and federal government for the reimbursement of the share of the AFDC assistance payment to the family or money expended for a child in foster care.

(11) "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence.

(12) "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

(13) "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the absent parent of the child support and medical support obligation and of the absent parent's right to request a hearing.

(14) "Obligor" means that individual who is ordered to pay support.

(15) "Offset" means set aside federal or state, or both, income tax refunds due absent parent as a means of collecting past-due child support.

(16) "Order to withhold earnings" means an administrative order issued by the cabinet or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage.

(17) "Preoffset notice" means a letter notifying an absent parent who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, or state refund tax intercept only.

(18) "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or of no change to the child support modification order.

(19) "Public assistance" means the receipt of aid to families with dependent children (AFDC), AFDC-related Medicaid, or foster care benefits.

(20) "Responding state" means the state that is managing the child support case received from an initiating state.

(21) "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Human Resources.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 2, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: This administrative regulation specifies the definitions for terms used in the administration of the Child Support Enforcement Program. This is an expansion of material which was previously located in 904 KAR 2:020 and 904 KAR 2:022. There is no change in policy which affects recipients of the child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First Year: None
2. Continuing Cost or Savings: None
3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.10.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect local contracting agents for child support services by setting forth definitions utilized in the administration of the child support program.

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation relates to the administration of the child support program regulation provided by local contracting officials.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation defines terminology used in administering the child support program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 45 CFR 301 - 45 CFR 307.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the Federal mandate. The definitions contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with definitions which are utilized for the administration of the child support program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:017. Job opportunities and basic skills (JOBS) child care and supportive services.

RELATES TO: KRS 205.200(2), 205.211, 45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the requirements for receiving job opportunities and basic skills (JOBS) child care and supportive services.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Center-based child care" means full- or part-time licensed care, day or night, provided for seven (7) or more unrelated children.

(3) "Certified child care" means child care which is provided in a private home, day or night, for six (6) or fewer unrelated children and the provider is registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:100.

(4) "Combination programs" means any educational program which includes as its basis literacy, ABE or GED. This program shall also include life skills, skills training or job readiness training.

(5) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, alternative work experience program or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) Program. Each individual component is described in 904 KAR 2:370.

(6) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(7) "Family child care" means care provided for no more than three (3) unrelated children. These homes are unregulated and exclude group home child care providers that may be voluntary certified.

(8) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) "Group home child care" means child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children. Mandatory and voluntary certified providers are subject to the health and safety requirements of 905 KAR 2:100.

(10) "In-home child care" means care provided to a child in his or her own home.

(11) "Licensed child care providers" means day care facilities which provide care for seven (7) or more unrelated children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:090.

(12) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(13) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(14) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(15) "Recoupment" means recovery of overpayments of child care.

(16) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:370.

(17) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(18) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or

licensed.

Section 2. Payment Entitlement. (1) With the exception of payments described in Sections 8 and 12 of this administrative regulation those individuals participating in the JOBS Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved JOBS activity, as described in Section 12 of this administrative regulation.

(2) JOBS activities are described in 904 KAR 2:370.

Section 3. Child Care Eligibility in JOBS Components. (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 4. Child Care Eligibility in Self-initiated Activities. (1) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

(a) Discontinued OJT participants;

(b) Component preparation; and

(c) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Child care shall be provided only for approved self-initiated activities.

Section 5. Child Care Limitations. (1) Child care payments shall:

(a) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.

(b) Be allowed as a deduction as outlined in administrative regulation 904 KAR 2:016 for any component yielding earned income.

(2) Payments shall not be made to a provider if the provider is:

(a) The parent or stepparent;

(b) The legal guardian;

(c) A member of the AFDC assistance unit which includes the child needing care;

(d) Not meeting applicable standards of state and local law; or

(e) Not allowing parental access.

(3) Local market rates shall be determined by:

(a) The type of provider;

(b) The age of the child;

(c) The special needs of the child. Special needs shall be verified by:

1. Entitlement to disability benefits; or

2. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

(d) The amount of time care is needed; and

(e) The geographical boundaries of the fifteen (15) area development districts.

(4) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(5) FT and PT maximum payment levels shall be established for the following groups of dependent children:

(a) "Special needs" includes children in no certain age group;

(b) "Infants" includes children under age one (1);

(c) "Toddlers" includes children from age one (1) up to age three (3);

(d) "Preschool" includes children from age three (3) up to age six (6);

(e) "School age" includes children age six (6) and over.

(6) For needs incurred on or after April 1, 1992, child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In-Home	$10	10	10	7	10	7	10	7	10	7

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In-Home	$9	9	9	6	8	5	8	5	8	5

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	13	10	13	10
Group Home	$12	12	12	9	12	9	12	9	12	9
Family/ In-Home	$11	11	11	8	11	8	11	8	11	8

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	11	8	11	8	11	8
Group Home	$12	12	12	9	10	7	10	7	10	7
Family/ In-Home	$11	11	11	8	9	6	9	6	9	6

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In-Home	$9	9	9	6	8	5	8	5	8	5

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$15	15	15	12	15	12	14	11	12	9
Group Home	$14	14	14	11	14	11	13	10	11	8
Family/ In-Home	$13	13	13	10	13	10	12	9	10	7

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$16	16	16	13	14	11	14	11	13	10
Group Home	$15	15	15	12	13	10	13	10	12	9
Family/ In-Home	$14	14	14	11	12	9	12	9	11	8

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	11	8	9	6	9	6
Group Home	$11	11	11	8	10	7	8	5	8	5
Family/ In-Home	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	9	6	9	6	9	6	9	6
Group Home	$10	10	8	5	8	5	8	5	8	5
Family/ In-Home	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In-Home	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In-home	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	11	8	11	8
Group Home	$12	12	12	9	12	9	10	7	10	7
Family/ In-Home	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	11	8	11	8	11	8
Group Home	$10	10	10	7	10	7	10	7	10	7
Family/ In-Home	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	10	7	10	7	10	7	10	7
Group Home	$10	10	9	6	9	6	9	6	9	6
Family/ In-Home	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		School-Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In-Home	$12	12	12	9	11	8	11	8	11	8

(7) Child care payments shall be limited as follows:

(a) Six (6) semesters (three (3) years) for a two (2) year post-secondary program;

(b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

(c) No restrictions on other education and training activities.

(8) These limits apply to both full-time and part-time enrollment.

(9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:

(a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and

(b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.

(10) Child care payments shall not be made if:

(a) An AFDC-UP qualifying parent is participating; and

(b) The nonparticipating parent is not incapacitated.

(c) The nonparticipating parent is employed and child care is allowed as a deduction as outlined in administrative regulation 904 KAR 2:016.

(11) When child care expenses are paid from another source the agency shall pay:

(a) Only the difference between the total child care and what the other source is paying; and

(b) Up to the maximum daily payment rate per child per provider.

Section 6. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 7. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 8. Transportation Payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT while the AFDC case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 9. Transportation Payments in Self-initiated Activities. (1) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment;

(c) Component preparation; and

(d) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Reimbursement shall be paid only for approved self-initiated activities.

Section 10. Transportation Payment Amount and Authorization. (1) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(2) Transportation reimbursement shall be made after receipt of appropriate verification through departmental forms or through the JOBS automated system. Payments shall be made as specified in 904 KAR 2:050.

(3) Transportation payments shall be limited in the same manner as child care payments, as described in Section 6(7) of this administrative regulation.

(4) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 11. Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 12. Other Supportive Services in JOBS Components. (1) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

(a) Component preparation;

(b) Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

(c) Transitional extension; or

(d) OJT participants discontinued from AFDC, until the end of the component placement.

(2) These services shall be approved by the case manager as defined in 904 KAR 2:370.

(3) Items and services that shall be approved are the purchase of:

(a) Remedial health care items or services not covered under the Medicaid Program;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) School supplies other than books;

(e) Fees to obtain a license;

(f) Timepieces that are necessary for training;

(g) The cost to have a photo identification made in order to take a GED test;

(h) The cost of a criminal records check fee if the provider requires verification; or

(i) Driver's education.

Section 13. Other Supportive Services in Approved Self-initiated

Activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(1) Transitional extension;

(2) Discontinued OJT participants; or

(3) Component preparation.

Section 14. Limitations on Other Supportive Services. (1) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

(a) Component preparation;

(b) Component-related;

(c) Transitional extension; or

(d) Discontinued OJT participants.

(2) Other supportive services shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

Section 15. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

(1) Verification is not returned by the service provider;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 16. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments:

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

(a) Of fraud;

(b) Involving a current recipient; and

(c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction in child care payments; or

(c) Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 17. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive services payments in the JOBS program are incorporated effective December 1, 1993. These forms include:

(a) PA-32, revised 1/93;

(b) PA-33, revised 7/93;

(c) PA-33.1, revised 6/91;

(d) PA-114, revised 1/93; and

(e) PA-416, revised 1/93.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 2, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: None as there are no policy changes. We are merely splitting regulation 904 KAR 2:016 into two.

(a) Direct and indirect cost or savings to those affected:

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: None we are merely splitting one regulation into two.

2. Continuing cost or savings: See first year comments.

3. Additional factors increasing or decreasing costs: See first year comments.

(b) Reporting and paperwork requirements: None other than what is currently required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) f in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with Federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6.

2. State compliance standards. The state compliance standards are the same as the Federal minimum requirements.

3. Minimum or uniform standards contained in the Federal mandate. All states which administer an AFDC program shall offer a JOBS program and shall guarantee child care and other supportive services necessary to permit participation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:141. Repeal of 904 KAR 2:140.

RELATES TO: KRS 194.050, 205.010 to 205.410, 205.510 to 205.710, 205.810 to 205.855

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility for administering public assistance programs as defined in KRS 205.010. Administrative regulation 904 KAR 2:140 was promulgated to incorporate by reference materials related to the programs of aid to families with dependent children (AFDC), home energy assistance, refugee assistance, food stamps, and state supplementation. Since the last amendment of 904 KAR 2:140, the Department for Social Insurance has filed new administrative regulations or amended existing administrative regulations which address the public assistance programs administered by the Department for Social Insurance separately. As these administrative regulations have been filed by topic, appropriate materials have been incorporated by reference into the topical administrative regulations as specified by KRS 13A.221. Therefore 904 KAR 2:140 is no longer necessary.

Section 1. 904 KAR 2:140, Supplementary policies for programs administered by the Department for Social Insurance, is repealed.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: None as this regulation is being repealed.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: AFDC:

(a) The AFDC program policy related to technical requirements is now located in 904 KAR 2:006 and 904 KAR 2:430;

(b) The AFDC program policy related to financial requirements is now located in 904 KAR 2:016 and 904 KAR 2:430;

(c) The AFDC program policy related to the right to apply and reapply is now located in 904 KAR 2:035 and 904 KAR 2:430;

(d) The AFDC program policy related to procedures for determining initial and continuing eligibility is now located in 904 KAR 2:040 and 904 KAR 2:430;

(e) The AFDC program policy related to adverse actions is now located in 904 KAR 2:046 and 904 KAR 2:430;

(f) The AFDC program policy related to time and manner of payments is now located in 904 KAR 2:050 and 904 KAR 2:430;

(g) The AFDC program policy related to hearings and appeals is now located in 904 KAR 2:055 and 904 KAR 2:430;

(h) The AFDC program policy related to delegation of power for oaths and affirmations is now located in 904 KAR 2:060 and 904 KAR 2:430;

(i) The AFDC program policy related to the Job Opportunities and Basic Skills (JOBS) program technical requirements is now located in 904 KAR 2:370 and 904 KAR 2:430;

(j) The supplemental policy for money payments which includes AFDC payments is now located in 904 KAR 2:430.

State Supplementation Program. The State Supplementation program policy is now located in 904 KAR 2:015 and 904 KAR 2:430.

Home Energy Assistance Program. The Home Energy Assistance Program policy is now located in 904 KAR 2:116.

Refugee Assistance Program. The Refugee Assistance Program is no longer operational in the Commonwealth of Kentucky.

Food Stamp Program:

(a) The Food Stamp Program policy related to definitions is now located in 904 KAR 3:010 and 904 KAR 3:110;

(b) The Food Stamp Program policy related to eligibility requirements is now located in 904 KAR 3:020 and 904 KAR 3:110;

(c) The Food Stamp Program policy related to technical requirements is now located in 904 KAR 3:025 and 904 KAR 3:110;

(d) The Food Stamp Program policy related to the application process is now located in 904 KAR 3:030 and 904 KAR 3:110;

(e) The Food Stamp Program policy related to the certification process is now located in 904 KAR 3:035 and 904 KAR 3:110;

(f) The Food Stamp Program policy related to coupon issuance procedures is now located in 904 KAR 3:045 and 904 KAR 3:110;

(g) The Food Stamp Program policy related to additional provisions is now located in 904 KAR 3:050 and 904 KAR 3:110;

(h) The Food Stamp Program policy related to administrative disqualification hearings and penalties is now located in 904 KAR 3:060 and 904 KAR 3:110;

(i) The Food Stamp Program policy related to fair hearings is now located in 904 KAR 3:070 and 904 KAR 3:110;

(j) The Food Stamp Program policy related to the contingency plan is now located in 904 KAR 3:080 and 904 KAR 3:110;

(k) The supplemental policy for the Food Stamp Program is now located in 904 KAR 3:110.

Medicaid Program.

(a) The Medicaid Program policy related to resource and income standards of the medically needy is now located in 907 KAR 1:004 and 907 KAR 1:615;

(b) The Medicaid Program policy related to technical eligibility

requirements is now located in 907 KAR 1:011 and 907 KAR 1:615;

(c) The Medicaid Program policy related to medical transportation is now located in 907 KAR 1:060 and 907 KAR 1:615;

(d) The Medicaid Program policy related to alternative home and community based services for the mentally retarded is now located in 907 KAR 1:140 and 907 KAR 1:615;

(e) The Medicaid Program policy related to home and community based services is now located in 907 KAR 1:160 and 907 KAR 1:615;

(f) The Medicaid Program policy related to Kentucky Patient Access and Care System (KenPAC) is now located in 907 KAR 1:320 and 907 KAR 1:615;

(g) The supplemental policy for the Medicaid Program is now located in 907 KAR 1:615.

Tiering: Was tiering applied? No. Tiering is not an issue as this regulation is being repealed.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:171. Repeal of 904 KAR 2:170.

RELATES TO: KRS Chapters 205, 405, 406, 407, 45 CFR Parts 300-307

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility for administering the Child Support Program in accordance with KRS 205.710 to 205.800, 205.992 and 405.400 to 405.530. Administrative regulation 904 KAR 2:170 was promulgated to incorporate by reference, the Department for Social Insurance child support manual of procedures, system handbook, action memorandums, and manual of forms. All policy contained in these documents is now covered in topical administrative regulations or has been incorporated into statutory form. The topical administrative regulations have materials incorporated by reference as specified by KRS 13A.221. Therefore, 904 KAR 2:170 is no longer necessary.

Section 1. 904 KAR 2:170, Incorporation by reference of materials relating to the Child Support Program, is repealed.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: KRS 13A.221 (2) prohibits the incorporation of all material relating to a general subject matter in one administrative regulation. KAR 2:171 repeals KAR 2:170, which contained all material incorporated by reference relating to the Child Support Program. New topical administrating regulations, filed concurrently with this administrative regulation, now have appropriate materials incorporated by reference. This change has no impact on consumers of child support services.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First Year: None

2.Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The Child Support Enforcement program application process is now located in 904 KAR 2:380 as specified in 205.720 and 205.725; the Child Support Program paternity establishment is now located in 904 KAR 2:390 as specified in KRS 406.010 and 406.180; the establishment, review and modification of child support and medical support orders is now located in 904 KAR 2:400 as specified in KRS 403.211 and KRS 405.400 through 405.990; and the collection and distribution of child support payments is now located in 904 KAR 2:410 as specified in KRS 205.710 through KRS 205.800. Safeguarding information and entering into cooperative agreements is located in proposed amended 904 KAR 2:020 as specified in KRS 205.175 and KRS 205.712.

Tiering: Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. None

2. State compliance standards. KRS 13A.221 (2) prohibits the incorporation of all material relating to a general subject matter in one administrative regulation. KAR 2:171 repeals KAR 2:170, which contained all material incorporated by reference relating to the Child Support Program. New topical administrative regulations, filed concurrently with this administrative regulation, now have appropriate materials incorporated by reference.

3. Minimum or uniform standards contained in the Federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:380. Child Support Enforcement Program application process.

RELATES TO: KRS 205.710 - 205.800, 205.992, 407.010 to 407.480, 45 CFR 302.31, 302.33 -302.36, 302.50, 302.65, 302.80, 303.2, 303.3, 303.15, 303.30 - 303.31, 303.70

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal law and regulations. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. This administrative regulation also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.

Section 1. Aid to Families with Dependent Children (AFDC) Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of, AFDC shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person.

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for AFDC benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in an AFDC case, as specified in 904 KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists, he shall have the opportunity to establish his claim according to criteria contained in 904 KAR 2:006, Section 16.

(4) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(5) Services provided to an AFDC recipient through the Child Support Enforcement Program shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support and medical support obligations; and

(f) Collection and distribution of child support amounts.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and distribute child support on behalf of children for whom:

(a) The state is making foster care maintenance payments as required by 42 USC 657; and

(b) An assignment of rights has been made.

(2) The Department for Social Services worker with responsibility for the foster care child shall:

(a) Cooperate with the child support agency;

(b) Complete and forward the foster care child support referral;

(c) Complete and forward the foster care child support change of status form when changes occur which relate to the child support process; and

(d) Forward copies of court documents pertaining to the child support process.

(3) "Good cause" for nonenforcement of child support for a foster care recipient exists when criteria contained in 904 KAR 2:006, Section 16 are met.

(4) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the Department for Social Services.

(5) Services available to a foster care recipient shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of child support or medical support obligations;

(d) Enforcement of child support and medical support obligations;

(e) Review and modification of child support or medical support orders when appropriate; and

(f) Collection and distribution of child support payments.

Section 3. Medical Support. (1) Medical support shall be a mandatory service for any recipient of the Medicaid Program, including a recipient of AFDC or foster care benefits.

(2) When a public assistance referral is received, the child support agency shall obtain the following information:

(a) The AFDC, Medicaid, or foster care case number;

(b) The name of the absent parent;

(c) The Social Security number of the absent parent;

(d) The name and Social Security number of the child;

(e) The home address of the absent parent; and

(f) The name and address of the absent parent's place of employment.

(3) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:

(a) Inform the client that medical support enforcement is available; and

(b) Obtain the following information:

1. The name of the absent parent;
2. The name and Social Security number of the absent parent;
3. The Social Security number of the child;
4. The home address of the absent parent; and
5. The name and address of the absent parent's place of employment.

(4) An application for Medicaid shall include an assignment of rights for medical support, as specified in 907 KAR 1:011, Section 8.

(5) Except for a client who is pregnant or in her post partum period as specified in 907 KAR 1:011, Section 9, a client shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(6) If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim according to criteria contained in 904 KAR 2:006, Section 16.

(7) The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of:

(a) A referral from a public assistance agency; or

(b) A nonpublic assistance application.

(8) Services available through medical support enforcement shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment and enforcement of child support and medical support obligations;

(d) Enforcement of child support and medical support obligations;

(e) Review and modification of child support and medical support obligations when appropriate;

(f) Collection of medical support payments if ordered; or

(g) Collection of health insurance payments.

Section 4. Services to an Individual not Receiving AFDC.(1) Child support services shall be made available to any individual who:

(a) Files a nonpublic assistance application for services with the child support agency;

(b) Is a Medicaid only client who requests child support services in addition to medical support; or

(c) Has been receiving child support services and is no longer eligible for public assistance.

(2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

(a) If the request is made in person, the packet shall be provided the same day.

(b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.

(2) The application packet shall include:

(a) Nonpublic assistance application form;

(b) Nonpublic assistance services fact sheet;

(c) Authority to collect support form; and

(d) Civil rights information pamphlet.

(3) The applicant shall be required to complete and return the authority to collect form.

(4) The child support agency may take an assignment of support rights from an individual receiving nonpublic assistance child support services if enforcement becomes necessary and a lien is to be filed in order to collect past due support; however:

(a) An assignment of rights shall not be a condition of eligibility for services; and

(b) The agency shall inform the recipient of this condition.

(5) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(6) The nonpublic assistance application fee may not exceed twenty-five (25) dollars and shall be determined by an income fee scale.

(a) The income fee scale shall be based on the previous year's net income.

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income.

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
$0 to 2,000	$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00

Section 6. Parent Locator Service and Associated Fee Service. (1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate an absent parent or an absent parent's sources of income and assets when location is necessary to take the next appropriate action.

(2) For a nonpublic assistance case in which location is the only service requested, a ten (10) dollar nonrefundable fee shall be charged. For parental kidnapping requests, a twenty (20) dollar nonrefundable fee shall be charged.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to interstate child support cases the full range of services available to intrastate cases. These services shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of child support obligation for:

1. An AFDC or foster case;

2. A Medicaid only case with the consent of the recipient; and

3. A nonpublic assistance case.

(d) Establishment of medical support obligation for:

1. An public assistance case; or

2. A nonpublic assistance case with the consent of the applicant.

(e) Enforcement of support orders;

(f) Review and modification of child support or medical support orders, or both, if appropriate; and

(g) Collection and distribution of current and past due support payments.

(2) To enforce child support laws between states:

(a) The child support agency shall receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases.

(b) The child support agency shall establish an interstate central registry responsible for:

1. Receiving and distributing incoming interstate requests; and

2. Responding to inquiries received from other states on interstate cases.

(3) Within ten (10) working days of receipt of an interstate case, the central registry shall:

(a) Ensure review of submitted documentation for completeness;

(b) Forward the case to the appropriate functional unit for case processing;

(c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed;

(d) Inform the initiating state of where the case has been forwarded for action.

(4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.

(5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.

(6) The initiating agency state shall:

(a) Use long-arm statutory authority to establish paternity if statutory authority exists;

(b) Within twenty (20) calendar days of determining that the absent parent is in another state, forward any necessary information and the case to the responding state's central registry for action.

(c) Provide the agency in the responding state sufficient and accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.

(d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.

(e) Notify the agency in the responding state within ten (10) working days of receipt of the new information by submitting updated forms or additional information.

(7) The responding state agency shall establish and use caseload procedures which ensure provision of necessary services including maintenance of case records. The agency shall periodically review program performance on interstate cases to evaluate the effectiveness of responding state procedures.

(8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:

(a) Intake;

(b) Establishment of paternity, child support obligation and medical support obligation, or both;

(c) Location;

(d) Collection of current and past due child support and medical support payments;

(e) Certification for federal or state tax refund intercept, or both;

(f) Monitoring;

(g) Enforcement of child support obligations and medical support obligations, or both;

(h) Review and modification of child support and medical support obligations.

(9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested and documentation is adequate; or

(b) If documentation is inadequate:

1. Notify the initiating state of necessary additions or corrections; and

2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating an absent parent in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state of its action.

(d) Within ten (10) working days of locating an absent parent in a different state, the agency shall return the work and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the absent parent has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary services as it would in an intrastate case by:

1. Establishing paternity and attempting to obtain judgment for prenatal costs, birthing expenses, and genetic tests upon establishment;

2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing cases for possible modification;

4. Processing and enforcing orders referred by another state;

5. Collecting and monitoring any support payment from an absent parent and forwarding collections to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or identify that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of formal hearings to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the initiating state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing state agency interstate cases. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of genetic tests from the party who denied paternity.

(b) Recoupment of these costs may also be shared by each party as long as the total amount recouped does not exceed the actual costs of the genetic tests.

(c) If costs are recovered, the responding state shall reimburse the initiating state.

(d) The responding state shall identify fees and costs deducted from support payments when forwarding payments to the initiating state.

Section 8. Material Incorporated by Reference. (1) Forms necessary to establish a child support or medical support case through the Division of Child Support Enforcement are incorporated effective December 1, 1993. These forms include:

(a) PA-125, revised 6/83;
(b) PA-125 Supplement A, revised 6/83;
(c) PA-125 Supplement B, revised 12/82;
(d) PA-125.1, revised 5/90;
(e) KA-125, revised 7/92;
(f) KA-125 Supplement A, revised 7/92;
(g) KA-125 Supplement B, revised 7/92;
(h) KA-125 Supplement C, revised 7/92;
(i) PA-121, revised 8/87;
(j) CS-33, revised 2/93;
(k) CS-37, revised 2/93;
(l) DSS-1260, revised 11/92;
(m) DSS-1263, revised 11/92;
(n) CS-65, revised 7/91;
(o) CS-98, revised 1/91;
(p) CS-100, revised 1/91;
(q) CS-103, revised 1/91;
(r) CS-109, revised 5/89;
(s) CS-140, revised 3/91.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 23, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. This is an expansion of material which was previously located in 904 KAR 2:020. There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:
(a) Direct and indirect cost or savings:
1. First Year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
Tiering: Was tiering applied? Yes. Tiering is not applicable to AFDC clients as an automatic referral is made to DCSE for services. Non-AFDC clients may apply for services for a fee that is based on a sliding income scale. This is mandated by federal regulation at 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 45 CFR 302.31, 302.33 - 302.36, 302.50, 302.65, 302.80, 303.2, 303.3, 303.15, 303.30 - 303.31, 303.70.
2. State compliance standards. There are no additional or differing state compliance standards.
3. Minimum or uniform standards contained in the Federal mandate. There are minimum operational time-frame standards and scope of services available to applicants.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Applications for non-AFDC services may be made at the office of the local contracting official, usually the county attorney. This is not a new service or requirement. This administrative regulation contains material previously located in 904 KAR 2:020.
3. State the aspect or service of local government to which this administrative regulation relates. Relates to child support enforcement activities of local contracting officials.
4. How does this administrative regulation affect the local government or any service it provides? The 904 KAR 2:380 sets procedure and timeframes under which contracting officials shall respond to application processes and services available to applicants for inter and intra-state services. As these are contracted services, local officials are paid by the cabinet for the performance of these duties. Because the state match rate for expenditures to administer the Child Support Enforcement Program is 66 percent, 34 percent of the cost of providing services is funded by local government.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:390. Child Support Enforcement Program paternity establishment.

RELATES TO: KRS 406.011 to 406.180, 45 CFR 302.31, 303.5, 302.33
STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520
NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. The agency shall establish paternity when necessary to secure support for a child. KRS 205.795 provides that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal regulations. This administrative regulation specifies the requirements of the agency in the establishment of paternity. This administrative regulation also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.

Section 1. Requirement for Paternity Establishment. The child support agency shall undertake establishment of paternity and secure support for a child from any person who is legally liable for support when:
(1) The child is born out of wedlock; and
(2) An assignment of rights to the child support agency is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Agency Action. (1) A case requiring paternity action shall be opened upon receipt of:
(a) A public assistance case referral; or
(b) A nonpublic assistance application, in accordance with KRS 205.721.
(2) The agency shall open a case pending determination of good cause.
(a) If "good cause" for failure to cooperate is determined, the child support case shall be closed;
(b) Good cause may be found to exist if criteria contained in 904 KAR 2:006(16)(4) is met.
(3) For all cases referred to the child support agency in which paternity has not yet been established, the agency, within ninety (90) days of locating the alleged father shall:
(a) File for paternity establishment;
(b) Complete service of process to establish paternity; or
(c) Document unsuccessful attempts to serve process, whichever occurs later.
(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:
(a) Successful service of process; or
(b) The child reaching the age of six (6) months.
(5) Upon order by a court of competent jurisdiction, the child support agency shall recover from an absent parent a reasonable fee for performing genetic tests.

Section 3. Identification of Laboratories which perform Genetic Tests. (1) The child support agency shall identify laboratories which perform legally and medically acceptable genetic tests which tend to include or exclude an alleged father in paternity proceedings.
(2) The child support agency shall provide a list of laboratories identified in subsection (1) of this section upon request to:
(a) Courts;
(b) Law enforcement officials; and

(c) The general public.

Section 4. Material Incorporated by Reference. (1) The form necessary for paternity establishment services provided through the Division of Child Support Enforcement is incorporated effective November 1, 1993. This form is the CS-99, revised January 1991.

(2) This form may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 23, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: This administrative regulation specifies the requirements of the child support enforcement agency in the establishment of paternity. This is an expansion of material previously located in 904 KAR 2:020. There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 45 CFR 302.31, 303.5 and 302.33.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the Federal mandate. This administrative regulations sets timeframes for beginning paternity establishment procedures and sets the requirement for identification of laboratories which perform genetic tests.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect local contracting officials, usually county attorneys. This administrative regulation does not contain new services or new requirements, but rather contains information which was previously contained in 904 KAR 2:020.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulations relates to the establishment of paternity and securing support for a child from any person who is legally liable for support.

4. How does this administrative regulation affect the local government or any service it provides? Sets specific paternity action required upon receipt of application for services or referral from a public assistance agency. As these are contracted services, local officials are paid by the cabinet for the performance of these duties. Because the state match rate for expenditures to administer the Child Support Enforcement Program is 66 percent, 34 percent of the cost of providing child support services is funded by local government.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS 194.050, 205.710 - 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders. The content of this administrative regulation includes information regarding the establishment of a child support obligation and the appeal procedure which was previously located in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.

Section 1. Support Obligation Shall be Established. (1) A child

support and medical support obligation shall be established:

(a) By a court of competent jurisdiction; or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212.

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases referred to the child support agency, or for those nonpublic assistance cases for which child support services are being provided, the agency shall use state statute and legal process in establishing a child support and medical support obligation.

(5) Within ninety (90) calendar days of locating an absent parent or of establishing paternity, the child support agency shall establish an order for support or document unsuccessful attempts to serve process.

(6) If a court or administrative authority dismisses a petition for support without prejudice, the agency shall; at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support and medical support obligation when:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The parent resides or is employed in Kentucky; and

(d) The absent parent's address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the Kentucky child support guideline as contained in KRS 403.212.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the parental client:

1. A financial questionnaire;
2. A child care expense questionnaire; and
3. A medical support verification request.

(b) Send to the nonparental client:

1. A child care expense questionnaire; and
2. A medical support verification request.

(c) Send to the absent parent:

1. An appointment letter;
2. A financial questionnaire;
3. A child care expense questionnaire; and
4. A medical support verification request.

(d) Send to the employer of the parental client or the absent parent, or both if both are employed, a wage information request.

(4) In a default case, the cabinet shall set the obligation based on the AFDC standard of need for the child or children as specified in 904 KAR 2:016, Section 7(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall serve the notice of monthly support obligation upon the absent parent in accordance with KRS 405.440.

(7) In accordance with KRS 405.430(2), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The child support agency shall have a written and publicly available review and adjustment plan for child support orders.

(2) The child support agency shall review all public assistance cases which are thirty six (36) months old or older. Subsequent reviews shall occur at thirty six (36) month intervals based on the date:

(a) The order was adjudicated;

(b) It was determined the order should not be adjusted; or

(c) Upon which the post review challenge period ended.

(3) All public assistance and nonpublic assistance cases shall be reviewed at the request of either parent or any other person or entity that may have standing to request a modification subject to the child support order.

(4) The child support agency shall notify each parent subject to an order of the right to request a review.

(5) Within fifteen (15) calendar days of receipt of a review request, the child support agency must determine if a review shall be conducted.

(6) The child support agency shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the child support agency shall:

(a) Send a notice to each parent that a review will be conducted;

(b) Conduct the review;

(c) Send a notice of the result; and

(d) Modify the order or determine that there will be no change.

Section 4. Appeal Procedures. (1) A parent, or any other person or entity that has standing or his authorized representative may request a dispute hearing in accordance with KRS 405.440 and 405.450.

(2) A request shall be made to the area child support office:

(a) In writing;

(b) In person; or

(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;

(b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. Good cause reasons shall include:

(a) A parent being away from home during the entire filing period;

(b) The parent's inability to read the notice of monthly support obligation; or

(c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or any other person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or any other person or entity having standing to

request a modification prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount will be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or any other person or entity having standing to request a modification may withdraw the hearing request by writing to the area child support office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Material Incorporated by Reference. (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated effective December 1, 1993. These forms are:

(a) CS-66, revised 8/92; and

(b) CS-72, revised 6/89.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: This administrative regulation specifies the requirements for the establishment, review and modification of child support orders and medical support orders. The content of the regulation is an expansion of materials previously located in 904 KAR 2:022 and 904 KAR 2:020 and is necessary to comply with KRS 13A.221(1). There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First year: While the federally mandated effective date for modification began October, 1993, full implementation is not anticipated until the end of SFY 94. Costs for SFY 94 are anticipated to be minimal and can be absorbed in the current enacted budget. There, the first full year of implementation will be SFY 95. Based on samplings from other state, the estimated cost savings to the client and the cabinet for AFDC cases could be approximately $590,300 the first year.

2. Continuing cost or savings: Based on samplings of other states, the increase in AFDC collections due to federally mandated modifications could offset the administrative costs by the 4th or 5th year of implementation.

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No new administrative process is required. Time frames for modification are now set by federal regulations for processing modifications.

(2) Effects on the promulgating administrative body: This administrative regulation will result in increased administrative costs to the department and the cabinet, and funds have been requested in the FY 94-96 budget request.

(a) Direct and indirect cost or savings:

1. First year: While the federally mandated effective date for modifications began October, 1993, full implementation is not anticipated until the end of SFY 94. Costs for SFY 94 are anticipated to be minimal and can be absorbed in the current enacted budget. Therefore, the first full year of implementation will be SFY 95, and the estimated administrative cost would be $2,155,700.

2. Continuing cost or savings: Administrative costs will continue to increase each year. However, based on samplings of other states, the increase in collections due to federally mandated modifications could offset the administrative costs by the 4th or 5th year of implementation.

3. Additional factors increasing or decreasing costs: Increased collections are estimated to be $590,300 the first year.

(b) Reporting and paperwork requirements: This administrative regulation will result in increased reporting and paperwork requirements. However, cost estimates include increased staff costs, postage, operating, and system costs; and funds have been requested in the FY 94-96 budget request.

(3) Assessment of anticipated effect on state and local revenues: Increased collection which are anticipated could offset the increase in administrative costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

Tiering. Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.10.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 302.50, 45 CFR 302.56, 45 CFR 303.4; 45 CFR 303.6, 45 CFR 303.8, 45 CFR 303.31.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. Specifications of requirements to establish and modify child support and medical support orders.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or

additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect local contracting officials, usually county attorneys. This is not a new service or requirement. This administrative regulation contains material previously located in 904 KAR 2:020 and 904 KAR 2:022.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to child support enforcement services provided by contracting officials to applicants.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders. As these are contracted services, local officials are paid by the cabinet for the performance of these duties. Because the state match rate for expenditures to administer the Child Support Program is 66 percent, 34 percent of the cost of providing services is funded by local government.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 205.710 - 205.800, 403.215, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51 - 302.54, 302.60, 303.6, 303.100 - 303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments. This administrative regulation includes content regarding wage withholding and other enforcement remedies which was previously included in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with the filing of this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.

Section 1. Collection of Spousal Support. Agency efforts shall include collecting support for a spouse or former spouse who is living with a child if:

(1) A support obligation has been established for that spouse; and

(2) The child support obligation is being enforced by the state child support agency.

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method as the primary tool for child support collection. For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

(b) The total amount withheld shall not exceed the maximum amount permitted by 15 USC 1673(b).

(c) If an absent parent has more than one (1) wage assignment against him, the child support agency shall allocate amounts available for withholding, giving priority to the current obligation amount due each family.

(d) If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(e) To comply with the advance notice requirements of KRS 405.467(3), the agency shall notify the absent parent within fifteen (15) calendar days of the request for wage withholding in writing that:

1. He has ten (10) days to contest the withholding;

2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and

3. Withholding shall apply to the current and any subsequent employer.

(f) In addition to the requirements of KRS 405.467(5)-(8), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected amounts to the child support agency within ten (10) working days of the date the amount is withheld from the absent parent's wages;

2. The employer shall include on the transmittal the name and Social Security number of the absent parent, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each absent parent;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the absent parent terminates employment and provide the following information:

a. The absent parent's last known address; and

b. The name and address of the new employer, if known.

(g) The absent parent shall keep the child support agency informed of his current employer, and if he has access to health insurance coverage at a reasonable cost, health insurance policy information.

(h) The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the absent parent is employed to implement interstate withholding.

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the absent parent's employer shall:

a. Send notice to the absent parent within fifteen (15) calendar days of locating the absent parent or his employer;

b. Provide the absent parent with the opportunity to contest the withholding; and

c. Send notice to his employer and to the absent parent.

5. The child support agency shall notify the state in which the custodial parent resides when the absent parent is no longer employed in the state and provide the state with both the absent parent's and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the absent parent is employed shall apply.

(i) The child support agency shall terminate wage withholding procedures when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from an absent parent receiving unemployment compensation under the following conditions:

1. An absent parent who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the absent parent; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the absent parent fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the absent parent to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the absent parent.

(3) Federal tax refund (offset).

(a) Past-due AFDC, medical support payments (if a specified dollar amount is included in the order) and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least $150 as of January 1 of a year and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(b) A nonpublic assistance child support arrearage shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than $500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The arrearage may include medical support payments if a specific dollar amount has been ordered by the court;

4. The arrearage may include spousal support if:

a. Established by court order; and

b. The child support and spousal support are included in the same order.

5. The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

6. The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

7. The child support agency shall calculate an assigned arrearage as this arrearage shall be paid prior to a non-AFDC arrearage;

8. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(4) State income tax refund (offset).

(a) An AFDC, foster care or medical support (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is a legally established support obligation;

2. The absent parent's name and social security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) Spousal support shall not be included for offset and the arrearage amount shall be adjusted accordingly;

(c) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met.

Section 3. Aid to Families with Dependent Children (AFDC) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of AFDC shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the AFDC agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the AFDC family ineligible for AFDC shall be reported to the child support agency by the AFDC agency.

(a) If the family is ineligible for an AFDC payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for an AFDC payment or if a hearing is requested:

1. The AFDC agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 3(7) of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for AFDC is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received if it is determined that the family is ineligible for an assistance payment.

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

(7) The first fifty (50) dollars of the amount collected in a month on behalf of the AFDC family shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.

(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.

(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.

(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, the first fifty (50) dollars shall be paid to the family.

(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected

amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the AFDC family if unassigned arrearages are owed or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by an absent parent and the appeal is resolved, payment shall be made to the family or refunded to the absent parent within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an unassigned arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the absent parent contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the AFDC assistance payment.

(3) Collection of child support in the month after the month the family receives its last AFDC assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Liens on personal or real property when an arrearage is equal to or greater than one month's obligation; and

(b) Credit reporting.

(2) Within the context of the provisions of KRS 205.768, the Cabinet for Human Resources:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's social security number is unknown.

(3) Advance notice of the release of the information required by KRS 205.768(2) shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept.

(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.440 as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated effective November 1, 1993. These forms include:

(a) CS-111, revised 5/89;

(b) CS-148, revised 10/93;

(c) CS-149, revised 10/93;

(d) CS-122, revised 9/93;

(e) CS-123, revised 9/93.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: This administrative regulation sets forth the procedures for collection and distribution of child support payments. This is an expansion of material previously located in 904 KAR 2:022 and 904 KAR 2:020. There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering. Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.10.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 302.32, 302.32, 302.37, 302.38, 302.51 - 302.54; 45 CFR 302.60; 303.6, 45 CFR 303.100 - 303.102; 15 USG 1673(b).

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation sets forth procedures for the collection, and distribution of child support payments.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect contracting local officials, usually county attorneys. This is not a new service or requirement. This administrative regulation contains material that was previously contained in 904 KAR 2:020 and 904 KAR 2:022.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the collection and distribution of child support payments by local contracting officials.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation provides procedures by which child support collections collected by local contracting officials are distributed to consumers of child support services and the Cabinet for Human Resources. As these are contracted services, local officials are paid by the cabinet for the performance of these duties. Because the state match rate for expenditures to administer the Child Support Enforcement Program is 66 percent, 34 percent of the cost of providing child support services is funded by local government.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:420. Repeal of 904 KAR 2:022.

RELATES TO: KRS 205.710 to 205.800, 405.400 to 405.991, 45 CFR 303.101

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800 and 405.400 to 405.991. Administrative regulation 904 KAR 2:022 was filed to describe the administrative process for the establishment and enforcement of child support. In an effort to clarify the CSEP for the regulated entities, the cabinet is filing new topical administrative regulations which address agency processes in greater detail. Since the body of information contained in 904 KAR 2:022 has now been incorporated into new topical administrative regulations, 904 KAR 2:022 is no longer necessary.

Section 1. 904 KAR 2:022, Kentucky administrative process for child support, is repealed.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: This administrative regulation repeals 904 KAR 2:022 and allows for relocation of material contained in Section 2 and 3 of 904 KAR 2:400 and Section 4 and 5 of 904 KAR 2:022 to 904 KAR 2:410. There is no change in policy which affects recipients of child support enforcement services.

(a) Direct and indirect cost or savings to those affected:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods are available for consideration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Information contained in 904 KAR 2:022, Sections 2 and 3, has been relocated to 904 KAR 2:400, Establishment, review and modification of child support and medical support orders. Material contained in Sections 4 and 5 of 904 KAR 2:022 has been relocated to 904 KAR 2:410, Child support collection and distribution. The definitions contained in Section 1 of 904 KAR 2:022 have been relocated to 904 KAR 2:001, Definitions.

Tiering. Was tiering applied? No. Tiering is not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.10.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS 13A.221 (1) requires that the administrative body divide the general subject matter of administrative regulations into topics. This regulation is being filed concurrently with new topical administrative regulations.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:430. Supplemental policy for money payment programs.

RELATES TO: KRS 194.050, 42 USC 602

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer an AFDC Program. In addition, Kentucky administers a State Supplementation Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the AFDC and State Supplementation Programs. The content of this administrative regulation shall be considered the agency statement of policy and procedures with regard to issues not otherwise addressed in Kentucky administrative regulations. This administrative regulation includes material which was previously incorporated by reference in 904 KAR 2:140. 904 KAR 2:141, the repeal of 904 KAR 2:140, is being filed concurrently with the filing of this administrative regulation.

Section 1. Material Incorporated by Reference. (1) The following material necessary to the administration of the AFDC and State Supplementation Programs is incorporated by reference:

(a) Field Services Operation Manual Volume I, effective 11/93;

(b) Field Services Operation Manual Volume III, effective 11/93;

(c) Field Services Operation Manual Volume IV, Section 4900 through 4999, effective 11/93; and

(d) Field Services Operation Manual Volume X, effective 11/93.

(2) This material may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: None as the agency is only incorporating material that is used in the implementation of AFDC and state supplementation. This regulation makes no policy changes.

(a) Direct and indirect cost or savings to those affected: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering. Was tiering applied? No. Eligibility conditions for AFDC and state supplementation must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 602

2. State compliance standards. KRS Chapter 13A

3. Minimum or uniform standards contained in the federal mandate. Eligibility conditions for AFDC and state supplementation must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 3:110. Supplemental policy for the Food Stamp Program.

RELATES TO: KRS 194.050, 7 USC 2011 to 2030

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program. The content of this administrative regulation shall be considered the agency statement of policy and procedures with regard to issues not otherwise addressed in Kentucky administrative regulations. This administrative regulation includes material which was previously incorporated by reference in 904 KAR 2:140. 904 KAR 2:141, the repeal of 904 KAR 2:140, is being filed concurrently with the filing of this administrative regulation.

Section 1. Material Incorporated by Reference. (1) The following material necessary to the administration of the Food Stamp Program is incorporated by reference:

(a) Field Services Operation Manual Volume I, effective 11/93;

(b) Field Services Operation Manual Volume II, effective 11/93;

(c) Field Services Operation Manual Volume IIA, effective 11/93; and

(d) Field Services Operation Manual Volume X, effective 11/93.

(2) This material may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: November 22, 1993

FILED WITH LRC: December 13, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: None as the agency is only incorporating material that is used in the implementation of the Food Stamp Program. This regulation makes no policy changes.

(a) Direct and indirect cost or savings to those affected: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering. Was tiering applied? No. Federal and state statutes mandate the eligibility requirements for the Food Stamp Program to be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2011 to 2030

2. State compliance standards. KRS Chapter 13A

3. Minimum or uniform standards contained in the federal mandate. Federal and state statutes mandate the eligibility requirements for the Food Stamp Program to be implemented in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:615. Supplemental policy for the Medicaid Program.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1396a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medicaid Program. The content of this administrative regulation shall be considered the agency statement of policy and procedures with regard to issues not otherwise addressed in Kentucky administrative regulations.

Section 1. Material Incorporated by Reference. (1) The following material necessary to the administration of the Medicaid Program is incorporated by reference:
(a) Field Services Operation Manual Volume I, effective November 1993;
(b) Field Services Operation Manual Volume IV, effective November 1993; and
(c) Field Services Operation Manual Volume X, effective November 1993.
(2) This material may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: December 2, 1993
FILED WITH LRC: December 13, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street. Individuals interested in being heard at this hearing shall notify this committee in writing by January 16, 1994 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom
(1) Type and number of entities affected: None, as the agency is only incorporating materials used by the agency staff for the Medicaid Program. The incorporated materials reflect policies previously promulgated and approved. This regulation makes no policy changes but is being promulgated for quadrennial review purposes.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing cost or savings:
3. Additional factors increasing or decreasing costs (Note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
Tiering. Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards. This administrative regulation is being promulgated to comply with KRS 13A requirements.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 7, 1993 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 7, 1993, at 10 a.m. in Room 149 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the November 1, 1993 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Nick Kafoglis and Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Londa L. Wolanin, Richard Casey, Kentucky Higher Education Assistance Authority; John W. Adams, Jr., Brigadier General Julius L. Berthold; Carroll Roberts, Board of Hairdressers; Nathan Goldman, Sharon Weisenbeck, Board of Nursing; Dave Nicholas, Division of Occupations & Professions; Kimberly Hughes, Gregory E. Mayes, Natalie Hutcheson, Kentucky Housing Corporation; Rayetta M. Boone, Department of Agriculture; Phillip Shepherd, Kay Harker, Pamla Wood, Peggy Pauley, Bob Logan, Beverly Oliver, Karen Armstrong Cummings, Brian Gilpin, Jack Wilson, John E. Hornback, James Hale, Diana Andrews, Natural Resources and Environmental Protection Cabinet; Tom Dorman, Kentucky River Authority; Rodney K. Lawrence, Brenda Priestley, Louis Smith, Jack Damron, Department of Corrections; Sandy Pullen, Transportation; Don F. Coffman, Akeel Zaheer, Roland Goddu, Debbie Schumacher, Department of Education; Beverly H. Haverstock, Dwayne Gatewood, George Parsons, Sue G. Simons, Workforce Development Cabinet; Carla H. Montgomery, Department of Insurance; Mike Fulkerson, Richard E. Harmon, Racing Commission; Judith Walden, Bill Young, Department of Housing, Buildings and Construction; Karen Doyle, Bill Griffin, Barbara F. White, Dudley J. Conner, John Draper, Karen Thomas, Robert Kelley, Terry Wescott, Cabinet for Human Resources; Robert L. Barnett, Jr., Kentucky Pharmacists Association; John F. Nichols, Jr., Associated Industries of Kentucky; J. Tracy Spencer, The Spencer Group; Clair Nichols, J. Guthrie Association; Robert E. Nickel, McCoy & McCoy, Inc.; Greg Brotege, Rohm and Haas; Martin Cothran, The Family Foundation of Kentucky; Michael M. Kumpf, BP America; William J. Schedel, Jr., Marathon Oil Company; Greg Wilkins, Jerry D. Griffith, Ashland Petroleum Co.; Ronald E. Alexander, Chas Pendleton, Reynolds, Inc.; Dennis M. Minks, City of Louisville; Scott Fiepke, Charles Bryant, City of Elizabethtown; Bert May, Kentucky League of Cities; John Brazel, Tony Sholar, Kentucky Chamber of Commerce; Joe Taraba, University of Kentucky; Vince Guenthner, Louisville Water Co.; Linda Bridwell, Jan A Davie, Kentucky-American Water Co.; Lyle D. Cobb, KNA, KRCA; Gene Campbell, KET; John Cooper, KBA; W. Terry McBrayer, Dennis Kaniff, Kentucky Coalition for RVP Gasoline; Laura Knoth, Sam Crawford, Kentucky Farm Bureau; Stephen Haughey, Wayne Hunt, Marney Nunnally, William F. Sparrow, Kentucky Fertilizer and Agricultural Chemical Association, Inc.; Liz Gillespie, ELF Atochem; Fran Ellers, Courier Journal; Tom Marshall; Cindy Rausch; MariAn Turley; Dan L. Turley; Chetan Talwalkar.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:

Natural Resources and Environmental Protection Cabinet

Secretary Shepherd stated that: (1) he hoped the process for developing these administrative regulations will become a model for the future; (2) the Cabinet decided to address the protection of groundwater over 14 months ago; (3) the protection of the state's groundwater has been the subject of much study in Kentucky; (4) the cabinet felt that it was important to take a step to protect groundwater before the federal government intervened; (5) a three step process was implemented to develop groundwater administrative regulations; (6) individual interest groups and environmental interest groups were called in to discuss their concerns over protecting groundwater with the staff of the division of water; (7) five public hearings were held throughout the state; (8) a draft groundwater protection plan was discussed at each of the public hearings; (9) after the public hearings the cabinet held meetings with a consensus group that included: (a) the major environmental groups; (b) the Chamber of Commerce; (c) the Associated Industries of Kentucky; (d) the Kentucky Farm Bureau; the Community Farm Alliance; and (e) the entire range of groups affected by the groundwater protection administrative regulations (10) this process was called negotiated rule making; (11) as a result of the negotiated rule making process the Cabinet's approach to the protection of groundwater was completely changed; (12) the approach of these administrative regulations is to attempt to prevent pollution in the first place, rather than look back to enact standards of cleanup after the pollution has occurred; (13) the negotiated rule making process is perhaps the best process that the cabinet has ever engaged in; (14) thousands of hours were devoted to this rule making effort; (15) the administrative regulations before the subcommittee today are not perfect; (16) although the environmental groups are concerned that the administrative regulations are not stringent enough in many respects, they have agreed to allow the cabinet to implement this program and see how it works; (17) groups like the Chamber of Commerce and Associated Industries are strongly in favor of this package; (18) this process is a major step forward for the Commonwealth; and (19) if these administrative regulations are not approved by the subcommittee, the cabinet could not continue with the negotiated rule making process.

Chairman Kerr stated it was his understanding that if individuals applying small quantities of pesticide can show by substantial evidence that there is no potential for groundwater contamination, they are not required to prepare a groundwater protection plan. Commissioner Logan responded that: (1) there are two approaches to developing a plan: (a) a site specific plan and a (b) a generic plan; (2) if pesticide applicators as a group develop a generic plan for the protection of groundwater, they can apply as a group; (3) under certain pesticide labeling requirements, applicators must comply with certain rate and manner restrictions in the application of pesticides; (4) these labeling restrictions may be made a part of the plan, although the applicator is required to develop some plan to protect the groundwater.

Chairman Kerr pointed out that, given Commissioner Logan's explanation, it did not appear that the exclusion would be available very often. Secretary Shepherd and Commissioner Logan responded that: (1) a commercial applicator of pesticides would have to have a groundwater protection plan, but the: (a) plan could be an industry wide or association wide plan; or (b) applicator could do his own plan; (2) the "de-minimis" application of pesticides that Chairman Kerr described could be a part of the plan; and (3) if there is a one time application of a small amount of pesticides as Chairman Kerr described, the general exclusion would apply.

Senator Kafoglis complemented Secretary Shepherd for the outstanding job done by the Cabinet in bringing the various interest groups together to adopt the groundwater administrative regulations.

Senator Kafoglis stated that: (1) the chemical and fertilizer industry is still concerned about the potential unfair treatment of their group by the Cabinet; and (2) he wanted to know what steps had been taken to assure appropriate representation of the fertilizer and chemical industry in the development of the administrative regula-

tions.

Secretary Shepherd responded that: (1) dealing with agriculture in the groundwater protection plan was the most significant issue in the process; (2) the agricultural constituency is composed of over 95,000 farmers, who have never been regulated at all with respect to these kinds of activities; (3) an attempt was made to involve agriculture in a constructive way; (4) the Kentucky Farm Bureau, the University of Kentucky Agriculture Extension Service, the Kentucky Farm Alliance, and the Division of Soil Conservation were asked to participate in the development of the administrative regulations, and to notify their constituencies as the administrative regulations were developed; (5) the agricultural groups met, and a representative of the chemical and fertilizer industry attended the meetings; (6) it was decided that agriculture would be treated differently than the other regulated groups, because the family farmer and the small farmer were in a different position than industry; (7) farmers were given longer time frames to comply with the administrative regulations; (8) a peer group, composed of the U.K. Agriculture Extension Service; the Division of Soil Conservation; and some other groups, was established to develop groundwater protection plans for agriculture; (9) the fertilizer and chemical industry asked that they be included in the farmer exemption; (10) the cabinet: (a) felt that the fertilizer and chemical industry was a business, like any other business; (b) visited fertilizer and chemical plants; (c) were told that the fertilizer and chemical industry already had procedures in place to protect groundwater; and (d) felt the industry-wide procedures already in place would be sufficient to meet the standards in the administrative regulation; (11) the fertilizer and chemical industry wanted to be included in the peer group because their customers were farmers; and (12) the cabinet is willing to work with the industry to see that they are represented on but will ensure that the industry does not control the peer group.

Senator Smith asked whether a violation would be issued if an individual is not in compliance with the plan.

Secretary Shepherd responded that: (1) the administrative regulations require that individuals and groups develop a plan; (2) if the individual does not have a plan, the Cabinet could impose the penalties provided by statute for noncompliance with an administrative regulation; (3) if the plans are to be effective, the cabinet must work with all individuals and groups to assure the plans become implemented; (4) there would be no enforcement proceedings in addition to those already established by existing statute and administrative regulation ; and (5) action by the Cabinet would be required if the Cabinet, in response to a complaint, finds that an entity did not follow its plan to prevent groundwater contamination.

Senator Smith pointed out that: (1) several of his constituents are very concerned about these administrative regulations; (2) the key to the success of the program is the manner in which the Cabinet implements these administrative regulations; (3) the negotiated rule making process allowed interested parties to express their views; (4) the Cabinet should be commended for the process; and (5) if these administrative regulations are not properly implemented, this Subcommittee can always recall the administrative regulations and find them deficient.

Secretary Higdon responded that: (1) the Cabinet welcomes the continuing scrutiny of the General Assembly; (2) the rule making process followed in developing these administrative regulations was discussed with the General Assembly; (3) if the General Assembly approves this package, the Cabinet can work with the regulated community in the interest of the Commonwealth; (4) the package boils down to implementation; (5) there is a great deal of flexibility in the package; (6) the flexibility allows the Cabinet to properly and fairly enforce these new standards; and (7) the cabinet respects the legislative process in this regulatory program.

Chairman Kerr asked about the Cabinet's wish to file a supplement to the Statement Of Consideration.

Secretary Shepherd responded that the supplement is an attempt to: (1) explain to the agriculture and chemical industry the interpretation of the administrative regulations in terms of implementation and application in the farm setting; and (2) explain the role of the agricultural and chemical industry in the peer group process.

Senator Huff asked if the cabinet clearly had statutory authority to appoint a peer group.

Secretary Shepherd responded that: (1) the peer group process is appropriate, given the mission of the Division of Soil and Water Conservation; and (2) the Cabinet feels that there is statutory authority for implementing the peer group by administrative regulation.

In response to a question by Senator Smith, Cabinet personnel responded that they wanted to add to the Statement Of Consideration by including the supplement.

Subcommittee staff responded that the supplement could: (1) not be filed as an amendment to the Statement Of Consideration; (2) be filed as a document in support of the administrative regulations, so long as it: (a) does not add to, take away, or otherwise change the provisions of the administrative regulation; and (b) is not used as an interpretive guideline, or a guideline that would alter the provisions of the administrative regulation.

Senator Smith pointed out that the supplement is a clarification of the administrative regulation.

A motion was passed t accept the supplement as a document in support of the administrative regulation.

Representative Allen asked: (1) who would be responsible for the enforcement of the administrative regulations; and (2) what was the range of penalties for violation of the administrative regulations.

Secretary Shepherd responded that: (1) the administrative regulations would be primarily enforced by the Division of Soil and Water Conservation service in each county; and (2) if one did not participate in government subsidy programs, the administrative regulations would not apply.

Representative Allen stated that: (1) the problem he has with the administrative regulations is the problem he has with any additional government regulation; (2) the people of Kentucky really don't know who is responsible for the enforcement of the administrative regulations; and (3) this is another example of government out of control.

Secretary Shepherd responded that: (1) the administrative regulations take a grass roots approach to developing standards; (2) the program was developed from the ground up; (3) the Cabinet went to the groups that have direct contact with the farmers and asked them to help develop the administrative regulations; and (4) in the long run, compliance will be achieved by deferring to those individuals who are directly involved in agriculture.

Representative Bruce pointed out that 99% of the farmers use fertilizer, and asked who would be responsible for inspecting fertilizer and agriculture chemical dealers. Secretary Shepherd responded that: (1) the Department of Agriculture would primarily enforce them; and (2) the Cabinet did not intend to do any extra enforcement work with regard to fertilizer and chemical dealers.

Senator Smith pointed out that: (1) the groundwater protection administrative regulations are not federally mandated; (2) this is entirely a state program; and (3) this program was developed from the people up, which is the way government should work.

Stephen N. Haughey, Counsel, and Wayne Hunt, President and head of legislative affairs for the Kentucky Fertilizer and Agricultural Chemical Association, Inc., (KFACA) spoke in opposition to the administrative regulations and provided written comments to the subcommittee. A copy of the written comments are filed with the administrative regulations . Mr. Haughey stated that:

(1) the KFACA was formed to work closely with government and the agricultural community in promoting agriculture; (2) the KFACA strongly supports the efforts of the Natural Resources and Environmental Protection Cabinet (NREPC) to protect the environment; (3) the administrative regulations fail to comply with KRS 13A.120(1) because there is no statute authorizing the promulgation of the administrative regulations; (4) before the Cabinet may file these

administrative regulations, a groundwater protection act must first be enacted by the General Assembly, as was done in West Virginia (West Virginia Code Chapter 20, Article 5M, Enacted by Laws of 1991, Chapter 117) and Indiana (Indiana Code, Title 13, Article 7, Chapter 26, Enacted by Indiana Acts of 1989, Public Law 168); (5) the proposed administrative regulations are: (a) unprecedented in scope, unnecessarily vague and confusing, because: 1. with the exception of two activities, there are no minimum quantities that must be exceeded before a groundwater protection plan is required; 2. there is no requirement that a groundwater protection plan be developed only for a product, material or intermediate substance that is a hazardous material; and 3. the exclusion from the requirement to prepare a groundwater protection plan requires a legal and scientific analysis that would be difficult, if not impossible, to prepare, unduly expensive, and offers no technical guidance or clear standards by which the analysis could be prepared and judged; (b) open to arbitrary and inconsistent interpretation; (c) are duplicative and unnecessary, and will put Kentucky at an economic disadvantage vis-à-vis neighboring states; and (d) violate KRS Chapter 13A because they: 1. do not provide for monitoring of all plans by the Cabinet; 2. provide only that the Cabinet will monitor a small number of plans, annually, and will monitor those against whom a complaint is received; 3. by requiring the regulated entity to determine whether it is excluded or required to develop a groundwater protection plan, fails to establish clear conditions and criteria for the determination; 4. do not establish the required elements of the plans, require certification of compliance with vague standards, and holds the regulated entities liable for failure to comply with standards that either do not exist or are vague; and 5. fail to clearly establish acceptable practices and procedures, and requirements that must be met; (6) unnecessarily duplicates approximately 20 provisions of existing state and federal law governing and establishing standards for the same subject matter; (7) the regulatory impact analysis prepared by the NREPC is flawed in that it grossly underestimates the cost of meeting the requirements of the proposed administrative regulations; (8) the proposed administrative regulation fails to provide for sufficient tiering, because it does not show that the administrative regulation was designed to exclude, as required by KRS Chapter 13A, entities who do not contribute significantly to the problems the administrative regulation is designed to correct, or reduce the disproportionate impact on them; and (9) even though the proposed administrative regulation is overly broad, vague and confusing, and is subject to different interpretations, failure to comply with every requirement of the administrative regulation, if adopted, carries significant civil and criminal penalties.

Representative Bruce asked Mr. Hunt: (1) if surrounding states have this type of administrative regulation; and (2) what will be the increased cost for fertilizer in Kentucky if this administrative regulation is adopted.

Mr. Hunt stated that: (1) the extra cost to a facility of assuring that there is not potential for groundwater pollution is approximately $100,000 per facility; (2) in his facility the cost may be in the neighborhood of $400, 000; and (3) no other surrounding state has this type of administrative regulation.

Representative Bruce stated that: (1) he could get his fertilizer in another state; and (2) he felt the public should know that Farm Bureau and the Kentucky Chamber of Commerce supported the increased regulation that gave rise to the increased fertilizer cost.

In response to a question by Senator Huff, Mr. Haughey stated that KRS Chapter 224 has an appeal process that would apply to this administrative regulation.

Representative Allen responded that he was concerned about the impact of this administrative regulation after the testimony of Mr. Haughey and Mr. Hunt.

Sam Crawford and Laura Knowles, representing the Kentucky Farm Bureau stated that: (1) Ms. Knowles served on the consensus group that put together the administrative regulations; (2) the peer group will allow the farmer's interests to be served while implementing the administrative regulations; (3) the negotiated rule making process made the administrative regulations much more workable; (4) the administrative regulations are farmer-friendly and pro-active; (5) the idea of the administrative regulations is to prevent pollution before it happens; (6) the administrative regulations are unique in their approach; (7) there is adequate to time to implement the plans: 2 years to develop a plan and 5 years to get it implemented; (8) other states can look to Kentucky as a model for groundwater protection; (9) this administrative regulation could preclude a federal mandatory program; (10) the peer group will help act as a buffer between the farmers and the Cabinet; and
(11) the cost share program will be requested in the Cabinet's budget.

John Nichols, representing Associated Industries of Kentucky, stated that: (1) more often than not, Associated Industries does not support the Cabinet in its position on environmental issues; (2) this administration's decision to deal with some of the most troublesome regulatory problems through a negotiated rule making process deserves a great deal of praise; (3) the 8 months of work leading up to the promulgation of these administrative regulations has been time well spent and has been a regulatory success story; (4) these groundwater administrative regulations represent real progress and are a landmark in the regulatory process; (5) the package does not please everyone but constitutes a consensus and represents a positive new way of rule making; (6) these administrative regulations require the creation of groundwater protection plans which spell out the way the public is to conduct its business to prevent rather than remediate groundwater pollution; (7) there is no new permitting program created by these administrative regulations; (8) they do not require the commitment of endless resources for the remediation of already polluted water; (9) if this process is not affirmed by the Subcommittee, there may not be another opportunity to develop administrative regulations in this fashion; (10) Associated Industries requests that these administrative regulations be approved by the Subcommittee.

Representative Allen asked (1) who: (a) initiated the idea of the groundwater protection administrative regulations; (b) made up the consensus group that developed the administrative regulations; (c) made up the peer group that will develop the groundwater protection plans for agriculture; (d) is the farmer representative on the peer group; and (2) why these administrative regulations were developed when groundwater is already regulated.

Sam Crawford responded that: (1) the Cabinet and the consensus group developed the administrative regulations; (2) the Cabinet initiated the idea of developing administrative regulations to protect Kentucky's groundwater; (3) the Kentucky Farm Bureau got involved in the process because it felt farmers needed to be protected as the administrative regulations were developed; (4) with the peer group in place, the interest of the farmer can be protected; (5) the peer group is made up of representatives from the: (a) Division of Forestry; (b) Division of Conservation; (c) Department of Agriculture; (d) Kentucky Geological Survey; (e) agriculture production organizations; (f) the U.K Agriculture Extension Service; (g) commodity groups; (h) environmental organizations; and (i) a farmer representative; (6) the agriculture representatives for the consensus group included members of the Kentucky Farm Bureau and the Community Farm Alliance.

Representative Allen stated that the Community Farm Alliance did not represent agriculture or the interest of farmers.

Mr. Scholer stated that the Chamber supported the administrative regulations and the negotiated rule-making process and, although not perfect, the administrative regulations were a good faith effort to implement a necessary program.

The Subcommittee approved a motion finding the administrative regulations deficient for failure to conform to statutory authority. Subcommittee members stated that the General Assembly should review the issues raised by these administrative regulations.

Department for Environmental Protection: Water Quality

401 KAR 5:036. Groundwater protection plans.

Department for Natural Resources: Division of Conservation

402 KAR 2:030. Soil and water conservation peer group.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:001. Definitions. Richard Casey and Londa L. Wolanin were present to represent the agency. This administrative regulation was amended to cite the federal statute as codified, inserting 20 USC Section 1087 vv(c) and deleting PL 97-376 Section 156 and PL 96 342, to comply with the drafting requirements of KRS Chapter 13A.

Department for Military Affairs: Kentucky Veteran's Program Trust Fund

106 KAR 2:010. Kentucky veteran's program trust fund implementation of program. Brigadier General Julius L. Berthold and John W. Adams, Jr. appeared before the Subcommittee representing the Department. This administrative regulation was amended to add a citation and correct a citation in the RELATES TO and STATUTORY AUTHORITY sections; Section 3(2)(e)3, Special Subcommittee on Veteran's Affairs, relating to membership on the Board of Directors, was deleted; and in Section 3(6) the listing of specific meetings to be attended by the Executive Director was deleted and replaced by "as directed by the chairman".

Board of Hairdressers and Cosmetologists

The following eight administrative regulations were amended to comply with the drafting requirements of KRS 13A.222(4)(a), (b), and (c).

201 KAR 12:050. Reciprocity for valid license.

201 KAR 12:060. Inspections.

201 KAR 12:065. Inspection of new, relocated and change of owner salons.

201 KAR 12:085. School advertising.

201 KAR 12:100. Sanitation standards.

201 KAR 12:110. School license.

201 KAR 12:120. School faculty.

201 KAR 12:125. Schools' student regulations.

Board of Nursing

201 KAR 20:240. Fees for applications and for services. At it's July 2, 1993 meeting, the Subcommittee determined that this administrative regulation was deficient because the substantial increase in fees did not comply with legislative intent. The amendment to this administrative regulation deleted the increase in fees. The Subcommittee determined a motion that the deletion of the fee increase corrected the deficiency, and approved a motion removing its July 2, 1993 finding of deficiency. This administrative regulation is not subject to expiration.

This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4)(b) requiring the use of "shall" to express a duty or obligation.

Athletic Commission

The following eight administrative regulations were amended to comply with the: (1) drafting requirements of KRS 13A.222(4)(a), (b), and (c); (2) provisions of KRS 13A.010(3) and 13A.330 by inserting the word "promulgated" in lieu of the word "adopted". These provisions establish a definition for "adoption" that makes it synonymous with "effective"; the approval of an administrative regulation for filing with LRC is expressed by the term "promulgated".

201 KAR 27:007. Powers and duties to commissioner or employee of the commission.

201 KAR 27:010. General requirements for boxing, elimination events, kick boxing, matches, shows, or exhibitions.

201 KAR 27:013. Scoring and conduct of boxing, kick boxing, and elimination events.

201 KAR 27:015. Prompt payment of fees, fines and forfeitures required.

201 KAR 27:020. Tickets.

201 KAR 27:030. Contestants in boxing, kick boxing, and elimination events.

201 KAR 27:040. Managers.

201 KAR 27:050. Announcers.

Kentucky Housing Corporation

202 KAR 2:010. Affordable housing trust fund. This administrative regulation was amended as follows: (1) Section 1(2) was amended to delete "not excluding other considerations", pursuant to KRS 13A.100, 13A.120(6), and 13A.130, which provide that an administrative regulation shall contain all requirements, conditions, restrictions, and prohibitions; (2) Section 2(2) was amended to comply with KRS 13A.222(4)(b), which requires the use of "shall" to express a duty or obligation.

Kentucky River Authority

420 KAR 1:010. Definitions. This administrative regulation was amended as follows: (1) Section 1, lines 1 through 5, were deleted because they repeated or summarized requirements established by KRS Chapters 13A and 446; (2) Section 1(10) was amended to delete the language in lines 2 through 5, and to insert a cross-reference to 401 KAR Chapter 5 in which the restrictions or prohibitions relating to "affluent limitations" were established.

420 KAR 1:020. Administrative procedures of the authority. Agency personnel agreed that the public notice provided for in Section 5(2)(b) and (4) had to comply with the provisions governing publication established by KRS 424.130. These sections were amended to require compliance with KRS 424.130.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. This administrative regulation was amended by correcting typographical errors in CPP 13.9, page 4, d. Objections had been raised to the establishment of a first incarceration shock treatment program (prison boot camp) or an accelerated alternative incarceration program, because the General Assembly had not specifically authorized an alternative program. The Subcommittee accepted agency personnel's statement that the broad authority granted to the Department permitted these alternative programs, and that most of the programs and requirements established by the Department were not specifically authorized and were established under the broad grant of authority.

501 KAR 6:050. Luther Luckett Correctional Complex. This administrative regulation was amended by amending the abbreviation "i.d." to spell out "identification containing a photograph of the person" in LLCC 18-03-04, page 2, a.

501 KAR 6:060. Northpoint Training Center. This administrative regulation was amended by correcting references 61.878-J-S in NTC 06-01-01.

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended as follows: (1) Capitalization of "bcc" in BCC 13-07-01, page 1, A; and (2) in BCC 13-07-02, page 1, A., 1. and 2., by deleting "shall be" and inserting "are" or "is", as appropriate, because KRS 13A.222(4)(b) requires the use of "shall" only when the intent is to express a duty or obligation.

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended by correcting a typographical error in WKCC 13-01-01, page 2, C.

Kentucky Racing Commission

The following three administrative regulations were amended as

follows: (1) to conform to the provisions of: (a) KRS 13A.220(4), establishing the format for administrative regulations; and (b) KRS 13A.222(4)(a), (b), and (c), prohibiting the use of specified words and ambiguous or superfluous words, requiring text easily understood by the public, and defining terms; and (2) to clearly establish the duties of officials, schedules, prohibited conduct, and penalties imposed.

Thoroughbred Racing

810 KAR 1:032. Breeders' award program.

Harness Racing

811 KAR 1:015. Race officials.

811 KAR 1:055. Declaration to start; drawing horses.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:090. Kentucky building code - 1994 edition. This administrative regulation was amended to correct typographical errors, or inadvertent deletions, in various sections.

Cabinet for Human Resources: Office of Administrative Services: Vital Statistics

The following two administrative regulations were amended to comply with the requirements of KRS 13A.220(4) and 13A.222(4)(a).

901 KAR 5:020. Delayed birth registration.

901 KAR 5:070. Certificate of birth amended.

Department for Health Services: Sanitation

902 KAR 10:020. Frozen food locker plants. This administrative regulation was amended to comply with the provisions of KRS 13A.222(4)(c), prohibiting the use of "such"; (i), prohibiting the use of "when" or "where"; and (k), prohibiting the use of "whenever".

Food and Cosmetics

The following three administrative regulations were amended to comply with the provisions of KRS 13A.222(4)(c), prohibiting the use of "such"; (i), prohibiting the use of "when" or "where"; and (k), prohibiting the use of "whenever".

902 KAR 45:005. Retail food code.

902 KAR 45:020. Shellfish. This administrative regulation was also amended to correct the date of material incorporated by reference in Section 8(2)(d), to specify the most recent edition.

902 KAR 45:040. Carbonated beverages. This administrative regulation was also amended to correct the incorporation by reference statement.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Student Loan Corporation: Information Systems

15 KAR 1:011. Repeal of 15 KAR 1:010.

Board of Hairdressers and Cosmetologists

201 KAR 12:010. Administrator's duties.

201 KAR 12:031. Replacement of license - duplicate license.

201 KAR 12:055. Instructor's license for out-of-state application.

201 KAR 12:080. Shops' and schools' public identification.

201 KAR 12:190. Investigations and complaints.

Kentucky Athletic Commission

201 KAR 27:005. Definitions.

201 KAR 27:035. Seconds.

201 KAR 27:045. Judges.

201 KAR 27:055. Physicians.

201 KAR 27:060. Referees.

201 KAR 27:070. Timekeeper.

201 KAR 27:081. Repeal of 201 KAR 27:016, 27:017, 27:018, 27:019, 27:025, 27:044, 27:065, and 27:080.

Kentucky River Authority

420 KAR 1:030. Management of surface water and groundwater in the Kentucky River basin.

420 KAR 1:040. Tier I water use fees. Questions had been raised over the assessment of fees to pay for administrative or general expenses of the Authority. The Subcommittee agreed with agency personnel that the statutes restricted the use of bond proceeds to capital construction and prohibited their use for administrative expenses or to operate locks and dams; and that, in authorizing the payment of per diem and other administrative expenses, coupled with the absence of an appropriation for other administrative expenses, it was the legislative intent that administrative expenses be paid by the assessment of fees for such purposes.

420 KAR 1:050. Tier II water use fees.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:110. Roederer Correctional Complex.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:040. Rehabilitation technology services. George Parsons, appeared before the Subcommittee and stated for the record that this administrative regulation will be republished to read in Section 3(4) exactly as it already reads in the Subcommittee's copy "Individuals who are not clients...." The word "not", will be inserted. It was inadvertently omitted from the published copy.

Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:141. Repeal of 806 KAR 3:140.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

815 KAR 20:100. Joints and connections.

815 KAR 20:150. Inspection and tests.

Cabinet for Human Resources: Department for Health Services: Hazardous Substances

902 KAR 47:040. Cellulose insulation.

Controlled Substances

902 KAR 55:060. Requirements for distribution of small amounts of controlled substances without manufacturer's or wholesaler's license.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the January meeting upon agreement by the promulgating agency and the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Waste Management Administrative Regulations

401 KAR 30:010 through 401 KAR 38:270.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

601 KAR 1:101. Proof of liability and cargo insurance.

Administration
601 KAR 2:010. General procedures.
Motor Vehicle Tax
601 KAR 9:040. Reciprocity and motor vehicle identification cards.

Department of Education: Office of Chief State School Officer
701 KAR 5:110. Use of local monies to reduce unmet technology need. Don Coffman was present to represent the Department. Mr. Coffman was asked to comment on the use of "standards" in Section 3 relating to reducing unmet need. Mr. Coffman responded that there were standards for different categories of equipment. It was pointed out to him that KRS Chapter 13A requires that any standards required by an administrative regulation are to be set forth in that administrative regulation. The administrative regulation was deferred for corrective action.
Office of Learning Programs Development: Education Professional Standards Board
704 KAR 20:620. Interdisciplinary early childhood education, birth to primary. This administrative regulation was deferred because the amendments offered by the agency in response to issues raised did not correspond to the copy of the administrative regulation before the Subcommittee. Agency personnel inadvertently rewrote the administrative regulation to reflect amendments it had agreed to make, rather than presenting the amendments in a separate document.

Workforce Development Cabinet: Department for Adult and Technical Education
Beverly Haverstock appeared before the Subcommittee representing the Cabinet. There was extensive discussion concerning "health care providers". Both administrative regulations define a "health care provider" in Section 1(f) of each administrative regulation as a doctor of medicine or osteopathy...or any other person determined by the United States Secretary of Labor to be capable of providing health care services. It was pointed out that the Cabinet would need to specify a particular list or cite the federal reference. Ms. Haverstock was prepared to amend these administrative regulations by specifying a list. Chairman Kerr pointed out that any person who could certify the need for an employee to take extended leave should be a health care provider who was providing health care to that employee at that time. Senator Kafoglis questioned the fact that perhaps not everyone in the list was licensed by the state. The Subcommittee and Ms. Haverstock agreed to defer the administrative regulations for further consideration by the Cabinet on the question of the definition of "health care provider."**Personnel System for Certified and Equivalent Employees**
780 KAR 3:070. Attendance, compensatory time, and leave.
Unclassified Personnel Regulations
780 KAR 6:060. Attendance, compensatory time, and leave.

Kentucky Racing Commission: Thoroughbred Racing
810 KAR 1:031. Intertrack simulcasting.

Cabinet for Human Resources: Kentucky Health Care Data Commission
902 KAR 65:010. Health data reporting by hospitals and ambulatory care facilities.

OTHER BUSINESS:

Objections to Administrative Regulations and Submission of Material to Subcommittee
Senator Huff stated that individuals who oppose an administrative regulation should attend or participate in the public hearing process, rather than wait until a particular administrative regulation reaches the Administrative Regulation Review Subcommittee to voice their objections. He objected to the volume of material that, too often, is submitted to the Subcommittee at the last minute, especially when this material could have been offered at the public hearing. Senator Huff stated that this practice greatly increases the workload of this Subcommittee, gives it and its staff little time for analysis, and causes apprehension when reviewing the administrative regulations before the subcommittee. He advised those who wish to object to an administrative regulation to voice their concerns at the public hearing before the administrative body, rather than waiting until the last minute and flooding the Subcommittee with their objections. Chairman Kerr expressed his agreement.

Governor's Authority Pursuant to 42 USC 7545(k)(6)(A) and KRS Chapter 13A
At its November, 1993 meeting, the Subcommittee considered questions raised over the determination by the Governor that
Terry McBrayer and Dennis Conniff, representing the Kentucky Petroleum Council, the Kentucky Petroleum Marketers Association, the Kentucky Gasoline Dealers Association, Triple A of Kentucky, Amoco, BP, Chevron, Mapco, Marathon, Shell, Sun, Texaco, Thornton Oil, and hundreds of jobbers, distributors and dealers throughout Kentucky, stated that: (1) while the Governor of Kentucky decided in September, 1993 to require the use of formulated in Jefferson, Campbell, Kenton and Boone Counties, and parts of Oldham and Bullitt Counties only, the Governors of Ohio and Indiana, that border the affected Kentucky counties, chose RVP gasoline rather than RFG gasoline; (2) in the affected Kentucky counties, gasoline costs would increase by ten cents a gallon; (3) in the wide geographical area, only the portion affected by Governor Jones' selection would be using RFG gasoline; (4) Governor Jones' selection of RFG by letter to the federal agency violated the requirements of KRS Chapter 13A because it requires such a selection to be made by the promulgation of an administrative regulation; (5) the position of the Cabinet, that the use of the letter was appropriate because the Governor had exclusive authority and because the manner of selection was required by the federal government, is incorrect: such a position would mean that the federal government could have absolute control over state matters, state law to the contrary notwithstanding; (6) an Open Records request for a copy of the recommendation made by the Cabinet supporting the selection of RFG was made in order to review the basis for the selection; (7) they were notified that a written recommendation did not exist; (8) while the federal government did not mandate the selection of RFG over RVP, the determination by the Governor bypassed the regulatory procedure established in KRS Chapter 13A to ensure public notice, the preparation of a regulatory impact analysis that would have disclosed the basis for the decision, the affect on the industry, a cost analysis, alternatives, public hearing and comment on the decision and the basis upon which it was made; (9) the information, notice, and opportunity for input intended by KRS Chapter 13A was circumvented; (10) since the Governor's selection was a policy determination by a government official who meets the definition of administrative body in KRS Chapter 13A, the requirements of the Chapter for the promulgation of an administrative regulation, and the preparation of documents, and the holding of hearings were mandatory; (11) in Jefferson County, a panel was convened to conduct hearings on this issue in which the state participated, but before the panel recommendation of RVP could be communicated to the Air Board for its final recommendation, the Governor sent his letter to EPA, thereby ending the hearing process before its completion; (12) environmental groups agree that the issue involved in the selection of the alternative gasolines is economic and not environmental; that either would accomplish the environmental ends desired.
Philip Shepherd, Secretary of the Natural Resources and Environmental Protection Cabinet, stated that: (1) the Governor's decision was made under the authority granted by the Federal Clean Air Act amendments that designated him, and not another state official or administrative body, as the party with authority to make this decision; (2) since the Governor acted as required by federal law in

a federal program entirely regulated and implemented by federal agencies, state law and procedures relating to administrative regulations are inapplicable; (3) under the provisions of KRS Chapter 13A, an administrative regulation is not required because the Governor does not have state statutory authority to promulgate an administrative regulation governing this subject matter which is completely controlled by federal law and regulation; (4) while the procedures established by KRS Chapter 13A were not followed, the public hearing and comment envisioned by the provisions of KRS Chapter 13A are satisfied because the Cabinet conducted public meetings at which comments by affected entities and the public were received and reviewed by the Governor; (5) the cost of RFG to the consumer will not be as great as suggested by Mr. McBrayer; (6) at least 17 other states have chosen RFG.

In response to a question by Senator Huff, Mr. Shepherd stated that the procedures followed by the Governors of Ohio and Indiana were similar to that followed by Governor Jones. In response to a question by Senator Huff, Subcommittee staff stated that: (1) the Subcommittee is considering this issue under its KRS Chapter 13A duty and authority to determine whether an administrative regulation is required or should have been promulgated or is needed; (2) that the Subcommittee could choose to make a determination and communicate it to LRC for transmittal to the appropriate legislative subcommittee or to the General Assembly; and (3) if is determined that, under the supremacy clause of the U.S. Constitution, the federal law governs and KRS Chapter 13A is inapplicable, the federal law established the only manner in which the election was to be made; KRS Chapter 13A applies to the Governor, because he meets the definition of administrative body established in KRS Chapter 13A, and it was intended to ensure public and legislative comment and review of policy determinations made by the executive branch.

Chairman Kerr stated that KRS Chapter 13A was intended to establish safeguards through the requirement of public comment and analysis of policy decisions made by administrative bodies. He requested a copy of a study referred to by the Cabinet that concluded there would be minimal economic impact upon consumers in the affected counties, and any document analyzing the regulatory impact of the Governor's decision.

Mr. Conniff stated that he had been informed that such studies, documents or written recommendations did not exist. Mr. Shepherd responded that a specific memorandum, containing the Cabinet's recommendation did not exist, and that the decision had been based on a discussion and review of materials, public comments, and economic affect of the selection of RFG, rather than on a document containing a recommendation for RFG.

Mr. McBrayer stated that the selection by the Governors of Ohio and Indiana by letter occurred because those states do not have statutes governing regulatory matters comparable to KRS Chapter 13A. He added that, unlike Governor Jones' selection, those states did conduct hearings. All parties agreed with Mr. Conniff's statement that, if RVP had been chosen, an administrative regulation would have been required.

Subcommittee staff stated that the fact that federal law might govern a subject matter did not mean that KRS Chapter 13A was inapplicable, or that a state administrative body was exempt from its provisions. In response to a question by Representative Yates, Mr. McBrayer stated that the latest studies submitted to the Department of Energy show the selection of RFG would result in an increase of ten cents a gallon, and that the Cabinet had not produced any studies to the contrary, nor shown the basis upon which its conclusions concerning cost to the consumer was made.

Representative Yates and other Subcommittee members expressed concern over the economic impact on affected counties that would result by consumers purchasing gas in nearby counties or states in which RFG was not required.

Chairman Kerr: (1) stated that whether KRS Chapter 13A applied or the issue was governed solely by federal law and the procedure it established was a close question and might require a decision by an appropriate court in order to be resolved; (2) requested the Cabinet and Mr. McBrayer to provide a copy of applicable studies, impact analyses, or documentation establishing the financial impact on citizens in the affected counties and upon which the decision was based; and (3) stated that the Subcommittee would reconsider this issue at its next meeting and decide whether to make a recommendation to LRC after it had reviewed the requested material.

Senator Huff requested that Subcommittee staff provide the Subcommittee with information on the regulatory requirements in the 17 states that have selected RVP.

Transportation Cabinet: Department of Vehicle Regulation: Driver Improvement

601 KAR 13:010. Medical Review Board; basis for examination, evaluation, test. At the request of the Subcommittee, Cabinet personnel discussed the establishment of the Medical Review Board and whether the cited authority, KRS 186.400, authorized its establishment by administrative regulation. In response to questions raised by Representative Yates, Cabinet personnel stated that: (1) the Cabinet had determined that, while the Medical Review Board was necessary to ensure that motorists suffering from a mental or physical handicap did not drive, it believed an explicit authorization by the General Assembly was required; (2) legislation has been prepared for introduction during the 1994 Regular Session of the General Assembly to accomplish this; (3) the requirement that a driver appear before the Medical Review Board should never be based solely on the age of the driver, which would violate prohibitions against age discrimination; (4) while an officer may not be a medical professional, his observation of erratic behavior by a driver required that he enforce the provisions of this administrative regulation; (5) while legislation to be proposed would provide the board with adequate medical staffing, the requirement that a driver pay for medical examinations would remain; and (6) the new staffing would help prevent unnecessary or repetitive medical examinations.

The Subcommittee approved a motion that this administrative regulation was deficient because it exceeded the explicit statutory authorization.

Natural Resources and Environmental Protection Cabinet

401 KAR 4:220, 401 KAR 47:170, and 410 KAR 1:010. The Subcommittee approved a motion by Senator Smith that administrative regulations relating to archaeological surveys with respect to landfills be considered by the Subcommittee at its next meeting, and that administrative personnel be requested to attend. In response to Senator Smith, Subcommittee staff stated that it appeared that three administrative regulations (401 KAR 4:220, 401 KAR 47:170, and 410 KAR 1:010) contained references to the subject matter, and that it would search for other relevant administrative regulations.

Fish and Wildlife Resources

301 KAR 2:260. Crow hunting season. The Subcommittee approved a motion by Representative Allen that 301 KAR 2:260, which was found deficient at the Subcommittee's October 4, 1993, be reconsidered by the Subcommittee at the next meeting of the Subcommittee.

The Subcommittee adjourned at 3:30 p.m. until January 4, 1993 at 10 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of November 29, 1993

The Interim Joint Committee on Agriculture and Natural Resources met Monday, November 29, 1993, and submits the following report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

Department of Fish and Wildlife Resources
- 301 KAR 2:140

Natural Resources and Environmental Protection Cabinet
- 401 KAR 50:034
- 401 KAR 50:035
- 401 KAR 50:038
- 401 KAR 57:061
- 401 KAR 65:001
- 401 KAR 65:010

Administrative regulations 415 KAR 1:110 and 415 KAR 1:115 were deferred to the next committee meeting.

The meeting adjourned November 29, 1993, at 2:40 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates G2

The Locator Index lists all regulations published in VOLUME 20 of the Administrative Register from July, 1993 through June, 1994. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 19 are those regulations that were originally published in the Volume 19 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1993 bound Volumes were published.

KRS Index G13

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 20 of the Administrative Register.

Subject Index G24

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

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VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

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302 KAR 20:040E	2596	4-30-93
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302 KAR 20:055E	2600	4-30-93
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302 KAR 20:065E	2602	4-30-93
Expires		9-29-93
302 KAR 20:070E	2604	4-30-93
Expires		9-29-93

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704 KAR 7:120	2539	(See Volume 20)
704 KAR 20:120		
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707 KAR 1:061	2540	(See Volume 20)
707 KAR 1:160	2541	(See Volume 20)
707 KAR 1:170	2543	(See Volume 20)
707 KAR 1:180	2545	(See Volume 20)
707 KAR 1:190	2551	(See Volume 20)
707 KAR 1:200	2554	(See Volume 20)
707 KAR 1:210	2558	(See Volume 20)
707 KAR 1:220	2561	(See Volume 20)
707 KAR 1:230	2564	(See Volume 20)
707 KAR 1:240	2569	(See Volume 20)
707 KAR 1:250	2572	(See Volume 20)
707 KAR 1:260	2574	(See Volume 20)
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805 KAR 7:030		
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902 KAR 8:050	2761	(See Volume 20)
902 KAR 8:060	2763	(See Volume 20)
902 KAR 8:070	2765	(See Volume 20)
902 KAR 8:080	2768	(See Volume 20)
902 KAR 8:090	2770	(See Volume 20)
902 KAR 8:100	2771	(See Volume 20)
902 KAR 8:110	2773	9-3-93
902 KAR 8:120	2774	(See Volume 20)
902 KAR 8:130	2777	9-3-93
902 KAR 8:140	2778	9-3-93
902 KAR 20:004	659	
Amended	2745	(See Volume 20)
908 KAR 2:070	2779	(See Volume 20)

*Statement of Consideration Not Filed by Deadline, Regulation Expired (KRS 13A.280(2))

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

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2 KAR 2:010E	483	8-12-93
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2 KAR 2:020E	1756	12-6-93
2 KAR 2:030E	1756	12-6-93
9 KAR 1:040E	736	9-9-93
Replaced	1567	12-6-93
11 KAR 3:001E	915	10-4-93
31 KAR 5:020E	736	9-15-93
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32 KAR 2:160E	1550	10-22-93
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101 KAR 2:100E	483	8-3-93
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101 KAR 3:010E	488	8-3-93
Replaced	1573	12-6-93
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301 KAR 2:044E	492	7-30-93
Replaced	596	10-27-93
301 KAR 2:220E	1552	10-27-93
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Replaced	679	10-27-93
301 KAR 3:030E	494	7-30-93
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302 KAR 15:010E	4	5-18-93
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415 KAR 1:115E	495	8-13-93
501 KAR 6:020E	277	6-24-93
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501 KAR 6:060E	1557	10-19-93
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780 KAR 3:070E	918	9-21-93
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806 KAR 2:120E	8	6-15-93
Replaced	247	9-3-93
806 KAR 2:130E	8	6-15-93
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902 KAR 8:070E	13	5-19-93
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902 KAR 8:090E	17	5-19-93
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